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61ST CONGRESS : : 3D SESSION

DECEMBER 5, 1910-MARCH 4, 1911

SENATE DOCUMENTS

VOL. 76

WASHINGTON : : GOVERNMENT PRINTING OFFICE : : 1912

81st CONGRESS : 3d SESSION

DECEMBER 1, 1910-MARCH 4, 1911

SENATE DOCUMENTS

VOL. 76

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1912

NORTH ATLANTIC COAST FISHERIES

PROCEEDINGS

IN THE

North Atlantic Coast Fisheries
Arbitration

BEFORE

THE PERMANENT COURT OF ARBITRATION
AT THE HAGUE

UNDER THE PROVISIONS OF THE GENERAL TREATY OF
ARBITRATION OF APRIL 4, 1908, AND THE SPECIAL
AGREEMENT OF JANUARY 27, 1909, BETWEEN
THE UNITED STATES OF AMERICA
AND GREAT BRITAIN

(IN TWELVE VOLUMES)

VOLUME VI

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JX
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CONTENTS OF PROCEEDINGS.

VOLUME I:

Final Report of the Agent of the United States.
Protocols of the Arbitration.
Award of the Tribunal, and Dissenting Opinion of Dr. Drago on Question Five.
Case of the United States.

VOLUME II:

Part I of the Appendix to the Case of the United States (Treaties, Statutes, and Correspondence).

VOLUME III:

Part II of the Appendix to the Case of the United States (Correspondence).

VOLUME IV:

Case of Great Britain.
Parts I and II of the Appendix to the Case of Great Britain (Treaties and Correspondence).

VOLUME V:

Part III of the Appendix to the Case of Great Britain (Statutes).

VOLUME VI:

Counter Case of the United States.
Appendix to the Counter Case of the United States.

VOLUME VII:

Counter Case of Great Britain.
Appendix to the Counter Case of Great Britain.

VOLUME VIII:

Printed Arguments of the United States and Great Britain.

VOLUME IX:

Part I of the Oral Arguments before the Permanent Court (Sir Robert Bannatyne Finlay, Great Britain; Honorable George Turner, United States).

VOLUME X:

Part II of the Oral Arguments before the Permanent Court (Sir James S. Winter, Great Britain; Honorable Charles B. Warren, United States; Mr. John W. Ewart, Great Britain; Honorable Samuel J. Elder, United States).

VOLUME XI:

Part III of the Oral Arguments before the Permanent Court (Sir William Snowden Robson, Great Britain; Honorable Elihu Root, United States).

VOLUME XII:

Appendices to the Oral Arguments before the Permanent Court.
Indexes.

NORTH ATLANTIC COAST FISHERIES

THE
COUNTER CASE OF THE
UNITED STATES

BEFORE

THE PERMANENT COURT OF ARBITRATION
AT THE HAGUE

UNDER THE

PROVISIONS OF THE SPECIAL AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND GREAT BRITAIN
CONCLUDED JANUARY 27, 1909

NOTE.—This volume contains also the Appendix to the Counter Case

CONTENTS OF THE COUNTER CASE.

	Page.
INTRODUCTORY STATEMENT.....	1
QUESTION ONE.....	3
The contentions of the Parties.....	3
The evidence relied on by Great Britain.....	7
Evidence against the British contention.....	9
The British attitude as to the French fishing liberty on the Newfoundland Coast.....	11
Conditions existing upon the treaty coasts in 1818.....	20
Joint regulations and policing under French treaties.....	22
The situation under the treaties of 1854 and 1871.....	24
The British contention.....	26
The Marcy circulars.....	27
The effect of the treaty of 1871 on Newfoundland legislation.....	32
Other evidence presented by Great Britain.....	36
The treasury circulars.....	37
The reasonableness of regulations.....	40
QUESTION TWO.....	45
The positions of the two Governments.....	46
Objections to the British contention.....	48
QUESTION THREE.....	55
Irrelevant questions discussed in British case.....	55
The evidence presented by Great Britain.....	56
The real question at issue.....	59
QUESTION FOUR.....	61
The scope of this question.....	62
Light and harbor dues.....	63
Customs requirements.....	63
Other exactions.....	64
QUESTION FIVE.....	67
Great Britain's present contention.....	68
The reply of the United States.....	69
The evidence.....	69
QUESTION SIX.....	75
The British contention.....	75
The language of the treaty.....	77
The intention of the Parties.....	77
The evidence relied on by Great Britain.....	78
Lord Bathurst's letter to Mr. Adams.....	79
Lord Bathurst's letter to Governor Keats.....	79
The French claim.....	81
The French-claim in the negotiations of 1783.....	82
The French-claim in the negotiations of 1818.....	86
Evidence subsequent to 1818.....	88
Controversy with France in 1823.....	89

QUESTION SIX—Continued.

Page.

The contention of the United States confirmed by Great Britain..... 93

The British admission in 1857..... 99

The British admission in 1877..... 101

Sir Robert Bond's novel interpretation discredited in Newfoundland..... 102

QUESTION SEVEN.....

105

The scope of the question..... 105

The position of the United States..... 106

THE COUNTER CASE OF THE UNITED STATES.

INTRODUCTORY STATEMENT.

It appears from an examination of the British Case that in addition to presenting the evidence on which Great Britain relies, in conformity with the requirements of Article VI of the Special Agreement of January 27, 1909, under which this arbitration is held, the Case also includes extensive discussions of legal authorities and precedents and a considerable amount of argument, and that such discussions and argument are built upon assumed positions and contentions attributed to the United States, which, for the most part, the United States is unwilling to accept as accurate or complete.

The view taken on the part of the United States as to the function and character of the printed Case and Counter-Case, required by Article VI of the Special Agreement, has been that the Case should present the evidence relied on in support of the position taken with respect to each question, and that the Counter-Case should deal with the evidence in reply to the Case of the other Party, postponing the presentation and discussion of questions of law and of the issues raised by the evidence until the printed and oral arguments. The Case of the United States was prepared in accordance with this view, and in the preparation and presentation of its Counter-Case the United States will follow the course indicated. In order, therefore, that the Counter-Case may not trespass upon the province of the arguments, no attempt will be made therein to reply to the portions of the British Case which deal with questions of law or to argue the issues presented by the evidence, such questions being reserved for consideration in the printed and oral arguments of the United States, in which also precedents and legal authorities relied upon by the United States will be presented and discussed.

A list of charts published by the United States Hydrographic Office, Bureau of Equipment, Department of the Navy, appears in the Appendix at page 689, copies of which charts will be available for use upon the oral argument.

The notices served by each Party, under the provisions of Article II of the Special Agreement of January 27, 1909, together with the correspondence relating thereto, are printed in the Appendix to the Counter-Case.^a

For the mutual accommodation of both Governments and in accordance with the clause of Article VIII of the Special Agreement, which provides that the time fixed thereby for the delivery of the counter-cases and printed arguments and for the meeting of the Tribunal may be extended by mutual consent of the Parties, it has been agreed by the United States and Great Britain that the time within which the counter-cases may be served, be extended to include February 21st, 1910, and that the printed arguments be delivered on May 16th, 1910, the argument of Great Britain being delivered at the Department of State, at Washington, or at the office of the Agent in New York if requested, and the argument of the United States at the Foreign Office at London on that date, duplicate copies thereof to be delivered as soon thereafter as possible to each of the members of the Tribunal, both arguments being delivered simultaneously in each case, and that June 1st, 1910, be fixed as the date upon which the first meeting of the Tribunal shall be held at The Hague, for the opening of the oral arguments.^b

^a U. S. Counter-case Appendix, pp. 5-11.

^b U. S. Counter-case Appendix, pp. 11-12.

QUESTION ONE.

To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance—

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

The contentions of the Parties.

Before taking up for consideration the evidence presented in the British Case with reference to Question I, it is desirable to ascertain the exact difference between the two Governments on this Question,

and this requires an examination of the contentions of Great Britain and the United States, which are made part of the Question, and on which it is based.

Question I recites as the contention of the United States that the exercise of the liberty to take fish referred to in Article I of the treaty, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty "is not subject to limitations or restraints by Great Britain, Canada or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

The contention of Great Britain, as recited in Question I, is that the exercise of such liberty "is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance—

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It will be observed that by reason of the numbered paragraphs of these contentions, the scope of the Question is distinctly confined to limitations, restraints, or regulations in respect of "(1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing."

The Question, therefore, does not submit for decision any contention on either side which does not pertain to the right of *fishing* on the treaty coasts.

It will also be observed, on a comparison of the lettered paragraphs of these contentions, that sub-division (c) of the contentions of the United States is the only contention of the United States with which Great Britain does not concur. Both Governments agree that in any event no regulations which are unreasonable can be imposed upon the exercise of the liberty referred to without the consent of the United States, and it is admitted in the British contention that to be reasonable they must be

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

In other words, Great Britain concurs entirely in the contention of the United States that no such regulations, limitations, or restraints can be so imposed

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class.

It follows that in answering Question I, which is "To what extent are the following contentions or either of them justified?" the Tribunal must necessarily hold, on the admission of Great Britain, that the contentions of the United States, as set forth in that Question, down through sub-division (b) thereof are wholly justified.

The only part of the contention of the United States, therefore, which requires further consideration is that covered by sub-division (c) thereof. The issue between the United States and Great Britain on this Question is thus reduced to the question of the extent to which the United States is justified in the contention that the exercise of the liberty referred to is not subject, in respect of the matters specified, to limitations, restraints, or regulations

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

It is evident from the foregoing examination of the British contentions, as set forth in this Question, that the position of Great Britain with respect to this particular contention is that the British authorities may interfere with the American fishing liberty on the treaty coasts without the consent of the United States, provided that such interference is appropriate, necessary, reasonable, and fair as defined in the contentions of the two Governments in Question I.^a

The position of the United States, on the other hand, is, as stated by Mr. Root, when Secretary of State, while this question was under discussion in 1906, that "the Government of the United States fails to find in the treaty any grant of right to the makers of colonial law to interfere at all, whether reasonably or unreasonably, with the exercise of the American rights of fishery, or any right to determine what would be a reasonable interference with the exercise of that American right, if there could be any interference."^b

The interpretation adopted for the treaty by the two Governments in their contentions, as set forth in Question I, would seem to be in itself sufficient to sustain the position of the United States on this point, for, obviously, it would be unreasonable to allow the British authorities to constitute themselves the sole judges of what kind of interference would be reasonable with respect to the American fishing liberty, when it is admitted by Great Britain that in order to be reasonable it must be, as a matter of fact, "appropriate or necessary for the protection and preservation of * * * the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects," and "equitable and fair as between local fishermen and the inhabitants of the United States

^a British Case, p. 20.

^b U. S. Case, p. 222.

exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class."

In this connection it will be remembered that the liberty, which Great Britain seeks to make subject to limitation and restraint, is defined in the treaty as a *liberty in common to take fish* and not as a *liberty to take fish in common* with British subjects, and that it arises under treaty stipulations between the two Governments, and not from voluntary legislation on the part of Great Britain conferring such liberty upon the inhabitants of the United States.

Furthermore as stated by Mr. Root in the course of the diplomatic correspondence on this subject in 1906,—

The provision is that the *liberty* to take fish shall be held in common, not that the *exercise* of that liberty by one people shall be the limit of the exercise of that liberty by the other. It is a matter of no concern to the American fishermen whether the people of Newfoundland choose to exercise their right or not, or to what extent they choose to exercise it. The statutes of Great Britain and its Colonies limiting the exercise of the British right are mere voluntary and temporary self-denying ordinances. They may be repealed to-morrow. Whether they are repealed, or whether they stand, the British right remains the same, and the American right remains the same. Neither right can be increased nor diminished by the determination of the other nation that it will or will not exercise its right, or that it will exercise its right under any particular limitations of time or manner.^a

Having thus defined the issue between the two Governments under Question I, the evidence upon which they rely in support of their respective contentions remains to be examined.

The evidence relied on by Great Britain.

In presenting the British contention on this Question, the British Case proceeds on the assumption that during the entire period covered by this treaty, and even before it was entered into, regulations of the character now proposed by Great Britain were in force on the treaty coasts, and were enforced against American fishermen in those waters; that American fishermen submitted to such regulations; and that no objection to their enforcement was raised by the United States until 1905, with the single exception of the Fortune Bay incident in 1878, which, it is stated, was adjusted without prejudice to the contention of either party.

These assumptions rest almost entirely on mere assertions of the facts assumed, without the production or citation of supporting

^a U. S. Case, p. 222.

evidence; and, inasmuch as the United States denies the accuracy of the facts thus assumed and asserted, it becomes necessary to call attention to this failure of proof on the part of Great Britain.

One of the assertions of fact referred to, the accuracy of which the United States calls into question and which requires particular attention here, is as follows:

From 1783 to 1878 British and Colonial laws, regulative of the fisheries, were enforced against British and American fishermen alike; without any contention being raised that American fishermen were exempt from their operation, or that, for their control, the concurrence of the United States was necessary.^a

Nowhere in the British Case is any attempt made to support this statement by evidence covering any portion of the stated period until after the treaty of 1818 was supplemented by the treaty of 1854, with the single exception of the citation of the Act of Parliament of June 14, 1819, which is referred to as an Act passed "for the express purpose of providing for the making of such regulations as might be rendered necessary by the access of United States fishermen to the shore fisheries."^a But it will be observed that the British Case very properly refrains from claiming that any regulations, which were enforced against the American fishermen or even applied to them, were ever adopted under this Act; and the fact is, as has already been shown in the Case of the United States in discussing the Orders in Council adopted under this Act, that the only regulations ever promulgated under its authority were directed not against American fishermen, but against British subjects.^b

It is evident, therefore, that the Act of Parliament of 1819, which, as above stated, is the only evidence cited in support of the British contention during the period referred to, falls far short of establishing the statement that British laws "relative to the American fisheries, were enforced against British and American fishermen alike."

So far as appears from the British Case, the only other British or Colonial Act relating to the fisheries on the treaty coasts, passed subsequent to the date of the treaty of 1818, during the period under consideration, was the Act of the British Parliament passed June 3, 1824 (5 Geo. IV, Cap. 51)^c, and the only provision in this Act which

^a British Case, p. 24. ^b U. S. Case, pp. 69-75. ^c British Case Appendix, p. 567.

related to fishing by foreigners on the treaty coasts was qualified by a proviso, which is common to all legislation relating to those coasts, "excepting the rights and privileges granted by treaty to the subjects or citizens of any foreign state or power in amity with His Majesty."

With reference to regulations relating to the fisheries on the treaty coasts in force prior to the treaty of 1818, the situation was stated by Lord Elgin, Secretary of State for the Colonies, in his despatch of August 8, 1906, to the Governor of Newfoundland as follows:

Light dues were presumably not levied in 1818, seines were apparently in use, the prohibition of Sunday fishing had been abolished in 1776 (see 15 George III, cap. 31), and fishing-ships were exempted from entry at Custom-house, and required only to make a report on first arrival and on clearing (see same Act). United States' vessels could, on the basis of the *status quo* in 1818, only be asked to make report at custom-house on arrival and on clearing.^a

An examination of the provisions of the act referred to requiring vessels to report at custom-houses will show that it applied only to fishing vessels enjoying trading privileges.^b

Evidence against the British Contention.

The objection on the part of the United States to the statement above quoted from the British Case does not rest, however, upon the mere failure of Great Britain to present evidence in support of it; the objection goes to the accuracy of the statement, and it will be found that the evidence against the British contention is overwhelming. For the purpose of satisfying the Tribunal on that point, its attention is invited to the evidence which has already been presented on behalf of the United States and to certain additional evidence now presented to disprove that contention.

Reverting to the beginning of the series of negotiations which led up to the Treaty of 1818, it will be remembered that, as pointed out in the Case of the United States, Lord Bathurst in his controversy with Mr. Adams stated, after discussing the basis for a new arrangement, that—

It was not of fair competition that His Majesty's Government had reason to complain, but of the preoccupation of British harbors and creeks, in North America, by the fishing vessels of the United States, and the forcible exclusion of British vessels from places where the fishery might be most advantageously conducted.^c

^a U. S. Case, p. 227.

^b *Infra*, p. 57.

^c U. S. Case, p. 33.

In making this statement, however, Lord Bathurst recognized that, if the American fishermen were not to be at liberty to take precedence over the British fishermen in those waters by preoccupying the British harbors and by forcibly excluding the British vessels from places where the fishery might be most advantageously conducted, neither should the British fishermen be at liberty to take precedence over the American fishermen in carrying on their fishing operations, and that the appropriate way to prevent the fishermen of either country from interfering with those of the other would be to adopt joint or concurrent regulations between the two Governments. Lord Bathurst, therefore, added in the same note, from which the above extract is taken, that he had called attention to the matters referred to in the hope that the Government of the United States "may be induced amicably and cordially to co-operate with His Majesty's Government in devising such regulations as shall prevent the recurrence of similar inconveniences."

That the United States entertained the same view on the subject of the adoption of regulations by the two Governments, is shown by the instructions sent by Mr. Monroe, when Secretary of State, on February 27, 1816, to Mr. Adams at London, empowering him to undertake the negotiations for a new fisheries agreement along the lines proposed by Lord Bathurst, which instructions are stated to be based on the representation "that the British Government was disposed to regulate in concert with the United States, the taking of fish on the coast, bays and creeks of all His Britannic Majesty's dominions in America."^a

Again, as pointed out in the Case of the United States, in reviewing the final negotiations which resulted in the treaty of 1818 and the actions of both Governments subsequent to that treaty, the position taken by both sides in those negotiations strongly supports the view that it was understood that, in the exercise of the common right of fishery, neither side was to be permitted to interfere with the other without its consent; and this view was confirmed by the action of Great Britain in issuing the Orders in Council of June 19, 1819, and September 9, 1907, which are reviewed in the Case of the United States.^b It will be remembered that these Orders were issued under the authority of the British Act of June 14, 1819, permitting the adoption of such Orders in Council as might be necessary to carry into

^a U. S. Case, p. 35.^b U. S. Case, pp. 69-75.

execution the provisions of the treaty of 1818 with respect to the taking of fish on the treaty coasts, and these Orders show that the only regulations, which the British Government regarded as appropriate for that purpose, applied to British subjects and not to the American fishermen; and under the earlier Order British subjects were notified that they were not to interrupt in any manner the fishery in common carried on by the inhabitants of the United States with British subjects on the treaty coasts.

Since the preparation of the Case of the United States, Great Britain has produced for the first time certain instructions issued by the British Government to the British Plenipotentiaries who negotiated the treaty of 1818, and certain reports of the British Plenipotentiaries to their Government with reference to the position taken by them in the course of the negotiations. The instructions and reports referred to will be found in the Appendix to the British Case;^a and their contents and the manner in which they are printed indicate that they are not complete in themselves and do not comprise all of the correspondence on the subject of the fisheries negotiations which passed between the British Plenipotentiaries and their Government at that time. It is evident, however, from so much of this correspondence as has now been produced, that there was no intention or understanding on the part of the British Plenipotentiaries in these negotiations that the American fishing liberty should be subjected to limitation or restraint or regulations by Great Britain without the consent of the United States. With reference to the portions of the instructions and reports of the British Plenipotentiaries which have not as yet been produced, it may fairly be presumed, under the rules of evidence recognized in the United States and Great Britain, that they do not add anything in support of the British contention.

The British attitude as to the French fishing liberty on the Newfoundland coast.

The real position of Great Britain on the subject of the enforcement of regulations against foreign fishermen exercising a common or concurrent right of fishery on the treaty coasts, is disclosed by an examination of the British attitude toward the French fishermen on the so-called "French Coast" of Newfoundland under treaty stipu-

^a British Case Appendix, pp. 85, 86, 92.

lations, between Great Britain and France relating to fisheries, which were in force during the period under consideration.

Contemporaneously with the negotiations for the treaty of peace between the United States and Great Britain in 1782, negotiations for a treaty of peace between Great Britain and France were being carried on; and the respective treaties of peace which resulted from these negotiations were both signed on September 3, 1783.

Prior to that time the rights of France in the North Atlantic coast fisheries rested on and were defined by the provisions of Article XIII of the treaty of Utrecht (1713), and Article V of the treaty of Paris (1763), which were as follows:

ARTICLE XIII OF THE TREATY OF UTRECHT.

The Island called Newfoundland, with the adjacent Islands, shall, from this time forward, belong of right wholly to Britain; and to that end the Town and Fortress of Placentia, and whatever other places in the said Island are in the Possession of the French, shall be yielded and given up, within 7 months from the exchange of the Ratifications of this Treaty, or sooner if possible, by the Most Christian King, to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, His Heirs and Successors, or any of their Subjects, at any time hereafter lay claim to any right to the said Island and Islands, or to any part of it or them. Moreover it shall not be lawful for the Subjects of France, to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said Island beyond the time necessary for fishing and drying of fish.

But it shall be allowed to the Subjects of France, to catch fish and to dry them on land, in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista, to the northern point of the said Island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the Island called Cape Breton, as also all others, both in the mouth of the River of St. Lawrence, and in the Gulph of the same name, shall hereafter belong of right to the French; and the Most Christian King shall have all manner of liberty to fortify any place or places there.^a

ARTICLE V OF THE TREATY OF PARIS.

The Subjects of France shall have the liberty of Fishing and Drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in Article XIII of the Treaty of Utrecht; which Article is renewed and confirmed by the present Treaty, (except what relates to the Island of Cape Breton, as well as to the other Islands and coasts in the mouth and in the Gulph of St. Lawrence).

^a U. S. Case Appendix, p. 51.

And His Britannic Majesty consents to leave to the Subjects of the Most Christian King the liberty of fishing in the Gulph St. Lawrence, on condition that the Subjects of France do not exercise the said Fishery, but at the distance of 3 leagues from all the coasts belonging to Great Britain, as well those of the Continent, as those of the Islands situated in the said Gulph St. Lawrence. And as to what relates to the Fishery on the coasts of the Island of Cape Breton out of the said Gulph, the Subjects of the Most Christian King shall not be permitted to exercise the said Fishery, but at the distance of 15 leagues from the coasts of the Island of Cape Breton; and the Fishery on the coasts of Nova Scotia or Acadia, and everywhere else out of the said Gulph, shall remain on the foot of former Treaties.^a

In the treaty of peace of 1783 between Great Britain and France these pre-existing fishing rights under the fisheries provisions of the treaties of Utrecht and Paris above quoted, were dealt with, as follows:

IV. His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland, and to the adjacent Islands, as the whole were assured to him by the XIIIth Article of the Treaty of Utrecht; excepting the Islands of St. Pierre and Miquelon, which are ceded in full right by the present Treaty, to His Most Christian Majesty.

V. His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the 2 Nations of England and France, consents to renounce the right of Fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the Eastern coast of Newfoundland, in 50 degrees North latitude; and His Majesty the King of Great Britain consents, on his part, that the Fishery assigned to the Subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the North, and descending by the Western coast of the Island of Newfoundland, shall extend to the place called Cape Raye, situated in 47 degrees 50 minutes latitude. The French Fishermen shall enjoy the Fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

VI. With regard to the Fishery in the Gulph of St. Lawrence, the French shall continue to exercise it conformably to the Vth Article of the Treaty of Paris.^b

This treaty was accompanied by a declaration by the King of Great Britain and a counter-declaration by the King of France, which, so far as they related to the fisheries provisions, are as follows:

BRITISH DECLARATION OF SEPTEMBER 3, 1783.

[Extract.]

The King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means

^a U. S. Case Appendix, p. 52.

^b U. S. Case Appendix, p. 53.

which shall not only ensure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

To this end, and in order that the Fishermen of the 2 Nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his Subjects from interrupting, in any manner, by their competition, the Fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the Island of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be formed there, to be removed. His Britannic Majesty will give orders that the French Fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and Fishing Vessels.

The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the Fishery, which has at all times been acknowledged, shall be the plan upon which the Fishery shall be carried on there; it shall not be deviated from by either Party; the French Fishermen building only their scaffolds, confining themselves to the repair of their Fishing Vessels, and not wintering there; the Subjects of His Britannic Majesty, on their part, not molesting, in any manner, the French Fishermen, during their fishing, nor injuring their scaffolds during their absence.

The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French Fishermen, and in full confidence that these Possessions will not become an object of jealousy between the 2 Nations; and that the Fishery between the said Islands and that of Newfoundland shall be limited to the middle of the Channel.*

FRENCH COUNTER-DECLARATION OF SEPTEMBER 3, 1783.

[Extract.]

The principles which have guided the King, in the whole course of the Negotiations which preceded the re-establishment of Peace, must have convinced the King of Great Britain, that His Majesty has had no other design than to render it solid and lasting, by preventing, as much as possible, in the 4 quarters of the World, every subject of discussion and quarrel. The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the 2 nations.

As to the Fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the 2 Sovereigns upon this matter, it is sufficiently ascertained by the Vth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day, by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

* U. S. Case Appendix, p. 54.

In regard to the Fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either Party, but to the middle of the Channel, and His Majesty will give the most positive orders that the French Fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English Fishermen.^a

In connection with the foregoing fisheries provisions, it should be noted that they were continued and confirmed by Article XIII of the Treaty of May 30, 1814, and Article XI of the Treaty of November 20, 1815, between Great Britain and France, which Articles are as follows:

ARTICLE XIII OF THE TREATY OF MAY 30, 1814.

The French right of Fishery upon the Great Bank of Newfoundland, upon the Coasts of the Island of that name, and of the adjacent Islands in the Gulf of St. Lawrence, shall be replaced upon the footing on which it stood in 1792.^b

ARTICLE XI OF THE TREATY OF NOVEMBER 20, 1815.

The Treaty of Paris of the 30th of May, 1814, and the final Act of the Congress of Vienna of the 9th of June, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty.^b

The correct interpretation of the foregoing treaty provisions was a matter of dispute between Great Britain and France for many years, France contending that the provisions should be interpreted as granting to French fishermen exclusive fishing rights on the coast of Newfoundland within the prescribed limits, which came to be known as the "French Coast," and as preventing the establishment of fixed settlements of whatever nature on that portion of the coast.^c Great Britain on the other hand has always denied that such rights were exclusive, and, although admitting that the French had certain prior rights to the use of the shore during the fishing season, has maintained that the British fishermen had rights in common with the French in the taking of fish in the waters of the French treaty coast.

The British position with respect to the French rights on the Newfoundland coast under these treaties and accompanying declarations is officially stated in the following extract from a note written July 10, 1838, by Viscount Palmerston to Count Sebastiani:

^a U. S. Case, Appendix, p. 56.

^b U. S. Case, Appendix, p. 57.

^c U. S. Case, Appendix, p. 1083.

It is true that the privilege secured to the fishermen of France by the Treaty and Declaration of 1783, a privilege which consists in the periodical use of a part of the shore of Newfoundland for the purpose of drying their fish, has in practice, been treated by the British Government as an exclusive right during the period of the fishing season, and within the prescribed limits; because, from the nature of the case, it would scarcely be possible for British fishermen to dry their fish upon the same part of the shore with the French fishermen, without interfering with the temporary establishments of the French for the same purpose, and without interrupting their operations. But the British Government has never understood the Declaration to have had for its object to deprive British subjects of the right to participate with the French in taking fish at sea off that shore, provided they did so without interrupting the French cod fishery.^a

So far as the above quoted treaty provisions relate to the taking of fish, which is the chief point of interest in the present connection, in distinction from the drying and curing of them, it will be observed that they respectively provide as follows:

The treaty of 1713 provides that "it shall be allowed to the subjects of France to catch fish * * * in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista, to the northern point of the said Island, and from thence running down by the western side, reaches as far as the place called Point Riche."

The treaty of 1763 provides that "the subjects of France shall have the liberty of fishing * * * on a part of the coasts of the Island of Newfoundland, such as is specified in Article XIII of the Treaty of Utrecht."

The treaty of 1783 provides that "the French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht," the only difference being that under this treaty the "French Shore" on the east coast of Newfoundland began at Cape St. John, instead of at Cape Bonavista, and on the west coast was extended to Cape Ray, at its southern extremity.

The British Declaration of September 3, 1783, provides that "His Britannic Majesty will take the most positive measures for preventing his Subjects from interrupting, in any manner, by their competition, the Fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the Island of Newfoundland." The obvious meaning of this stipulation is, and it has been

^a U. S. Case Appendix, p. 1096.

so interpreted by Great Britain, not that the British will not compete with the French, but merely that, if they do compete, they will not interrupt the fishery of the French by their competition.^a

It will be perceived from the foregoing analyses that the provisions in the French treaties relating to the taking of fish, are almost identical with the language used in the fisheries article of the treaty of 1783 between the United States and Great Britain with reference to the fishing liberty of the inhabitants of the United States on the British coasts generally; and that the provisions of the British declaration of 1783 requiring that the British fishermen shall not interrupt the French fishermen, as they have been interpreted by Great Britain, have practically the identical effect that the use of the expression "in common" in its reciprocal application to American and British fishermen has in the treaty of 1818, as interpreted by the United States.

In other words, under the British interpretation of the French treaties, they provided in effect that the French "shall have the liberty of fishing" on the coast specified, but that they shall not be interrupted by the British fishermen in their competition with them; and this interpretation of the French treaties exactly describes the fishing liberty "in common" with British subjects which the inhabitants of the United States have under the treaty of 1818 as interpreted by the United States.

Nevertheless, although Great Britain in the controversy with France has always maintained that French fishermen had merely a fishing liberty in common or concurrently with British subjects and has asserted territorial jurisdiction over the waters in which the French liberty of fishing was exercised, just as Great Britain now asserts such jurisdiction over the waters of the treaty coasts defined by the treaty of 1818 with the United States, yet, throughout the entire period during which the French treaty of 1783 and the subsequent treaties continuing the French rights were in force, neither Great Britain nor Newfoundland has ever undertaken to establish, much less enforce, any fishing regulations against the French fishermen in the waters of the "French Coast" or to limit or restrain in any way the exercise of the liberty of fishing secured to the French under those treaties.

^a U. S. Counter-Case Appendix, p. 323.

Conclusive evidence of the British position on this point is furnished by the Act passed by the British Parliament in 1788^a (28 Geo. III, cap. 35), entitled "An Act to enable His Majesty to make such regulations as may be necessary to prevent the inconvenience which might arise from the competition of His Majesty's subjects and those of the Most Christian King, in carrying on the fishery on the Coasts of the Island of Newfoundland."

This act recites the provisions of Article XIII of the treaty of Utrecht, and of Article V of the treaty of peace of 1783 with France, and of the British declaration accompanying the treaty of 1783, and that

It is expedient in conformity to the definitive treaty of peace and the declaration aforesaid, that His Majesty's subjects should be prevented from interrupting in any manner, by their competition, the aforesaid fishery of the subjects of His Most Christian Majesty, during the temporary exercise thereof, which is granted to them on the coast of Newfoundland;

And provides—

In order, therefore, that His Majesty may be the better enabled to carry the said several treaties and declarations into faithful and punctual execution, and to make such regulations as may be expedient, respecting the fishery in the manner herein after mentioned, be it enacted by the King's Most Excellent Majesty, * * * that it shall and may be lawful for His Majesty, his heirs and successors, by advice of council, from time to time, to give such orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, as he or they shall deem proper and necessary to fulfill the purposes of the definitive treaty and declaration aforesaid; and *if it shall be necessary to that end*, to give orders and instructions to the Governor, or other officer or officers aforesaid, to remove, or to cause to be removed, * * * all ships, vessels and boats belonging to His Majesty's subjects which shall be found within the limits aforesaid, and also, in case of refusal to depart from within the limits aforesaid, to compel any of His Majesty's subjects to depart from thence; any law, usage, or custom to the contrary, notwithstanding.^a

This act contains no regulations applying to French fishermen exercising their liberty of fishing under these treaties, and as above stated no attempt was ever made by Great Britain to adopt or enforce any fishing regulations against the French fishermen in their treaty waters during the period covered by the French treaty of 1783.

It is of peculiar significance, therefore, that the legislation adopted by Great Britain in 1819 for the purpose of carrying out its obliga-

^a British Case Appendix, p. 561.

tions to American fishermen under the treaty of 1818 should in effect correspond exactly to the legislation adopted by Great Britain in 1788 for the purpose of carrying out its obligations to the French fishermen under its treaty of 1783, (which will be found to be the case upon a comparison of the provisions of the Act of 1788 and the Act of 1819, which has already been examined)^a; and that, as has already been shown, the regulations adopted by Great Britain under the Act of 1819, in relation to the liberty of the American fishermen to take fish on the treaty coasts under the treaty of 1818, were directed not against American fishermen, but against British subjects, and required them "not to interrupt in any manner the aforesaid fishery" carried on by the inhabitants of the United States on their treaty coasts.

It is, therefore, evident that at the time the treaty of 1818 was made, Great Britain claimed no more authority to impose fishing regulations upon the American fishermen under that treaty than upon the French fishermen under their treaty of 1783; and that by adopting these acts of Parliament for the purpose of carrying out the British obligations under respectively the French treaty of 1783 and the American treaty of 1818, and by the course pursued by Great Britain in giving these treaties effect, the British Government gave notice to all concerned that in both cases alike the controlling obligation imposed upon Great Britain by these treaties was non-interference with the French and American fishermen in the exercise of their liberty of fishing on their respective treaty coasts.

Again in 1886, Great Britain officially disclaimed any authority to regulate the French fishermen in the exercise of their fishing liberty on the French treaty coast. This disclaimer followed the adoption, on August 9 of that year, by the Newfoundland Government of an order in council prohibiting the taking of lobsters, except for bait or local consumption, during a period of three years, in Rocky Harbor, Bonne Bay, on the French treaty coast, which order contained no reservation respecting treaty rights.

The French Chargé at London wrote to the Earl of Iddesleigh on September 20, 1886, referring to this order as follows:

I am instructed to inform Your Excellency that, in view of the fishery right conferred on France by the Treaties in the part of the

^a U. S. Case, p. 69.

island to which the Decree applies, a right which can evidently not be restricted in its exercise, it is impossible for my government to recognize in any way the validity of the measure taken by the Newfoundland authorities.^a

In reply to an inquiry on the subject, the Governor of Newfoundland informed the British government in his letter of November 24, 1886, that "though I have as yet had no communication from my ministers on the subject, I may mention at once that there was never any intention of enforcing this Order against French subjects."^b No attempt was made to enforce the order referred to against French fishermen, and on July 5, 1887, Lord Salisbury wrote to the French Ambassador at London:

With reference to Count d'Aubigny's letter of the 20th September last, in regard to the prohibition by the Newfoundland Government of fishing for lobsters in Bonne Bay, I have the honour to acquaint your Excellency that a despatch has been received from the Governor of that Colony in which he states that his Government have given a formal assurance that the prohibition will not be enforced against French citizens to whom there had not been any intention of applying it.^c

Conditions existing upon the treaty coasts in 1818.

The conditions upon the Newfoundland coasts, when the treaty of 1818 was entered into, are of interest in connection with the subject of the regulation of the fishing operations of foreign fishing vessels on those coasts, and, so far as they bear upon that subject, are disclosed by the following extracts from a publication prepared on behalf of the people of Newfoundland in 1890 with reference to the French treaty rights in Newfoundland:^d

During the whole period covered by the dates of these treaties, from 1713 to 1815, Newfoundland was, in fact, nothing but a station on the other side of the Atlantic, to which the fishermen of England and France annually resorted for the fishing or summer season only. Although by the terms of the treaties the "sovereignty" was declared to be in Great Britain, yet in fact, colonisation or settlement was not only not existing or contemplated, but was even prohibited by Great Britain under severe penalties. The fishermen of the two nations met on the Newfoundland fishing grounds, living on board their vessels, and prosecuting their fishing in their boats, and occupying the land, or rather the beaches on the coast, only for the temporary

^a U. S. Counter-Case Appendix, p. 317.

^b U. S. Counter-Case Appendix, p. 319.

^c U. S. Counter-Case Appendix, p. 322.

^d The Case for the Colony, stated by the People's Delegates, Sir J. S. Winter, K. C. M. G., Q. C.; P. J. Scott, K. C.; and A. B. Morine, M. L. A., published by P. S. King & Sons, Parliamentary booksellers, 5 King Street, Westminster, S. W., London.

purpose of curing and drying their fish. So carefully was the very idea of anything like permanent possession, or right of possession, forbidden among the English fishermen, that occupation of any particular place on the shore during one season gave no priority of claim whatever to that place for the next season. The beaches along the coast were marked out by the Fishing Admirals, as they were called, and divided into separate "rooms" or areas, each one sufficient for the fishing purposes of one ship's crew for one season; from which circumstances many of these old areas or spaces are called "ships' rooms" and "ancient ships rooms" to this day. At the beginning of each season these rooms were assigned by the Admiral for the time being, one to each of the several ships in turn of arrival, to be used or occupied by her crew for the season. The captain of the first fishing vessel that arrived on the coast from England in the spring was the Admiral for the season, and was clothed with full judicial and administrative powers. In order to emphasize and give the fullest effect to the "policy" of preventing settlement, the inhabitants (if any) of the coast were by express law prohibited from taking up any beach or place until all the ships arriving from England were provided for. There was then, literally, no local government of any sort on the island; no courts of justice, no judges, magistrates, or other ordinary tribunals, for the administration of justice, of the protection of the people in their simplest and most rudimentary rights and liberties.

Not only was the condition of the colony virtually that of barbarism and anarchy, but the whole "policy" of Imperial legislation and government was directed to the perpetuation of that condition and the prevention of any amelioration. A few commercial monopolists in England, interested in retaining in their own hands the whole business of the fishery in Newfoundland free from competition of any sort—then the only business in the colony which was supposed to be of any value—had sufficient influence with the "authorities" to secure the continuance of this state of barbarism in the island for many years, until the appearance and gradual growth of civilising institutions took place.

* * * * *

The "policy" by which, until within a comparatively recent period, the Imperial Government was guided in all its relations with the so-called "French shore" of Newfoundland was that of hindering and discouraging by every means short of express prohibition the settlement of population and the establishment of law and order. Although that part of the colony always has been included in the terms of the commission to the Governor, and therefore strictly within the "jurisdiction" of the Colonial Government, yet this jurisdiction was for many years, and for all practical purposes, a mere fiction; and nothing bearing the semblance of government, control, or authority in that part of the colony, that could possibly be prevented, was done or permitted.

In 1832, within fifteen years after the treaty of 1818 was signed, the British historian John M'Gregor made the following statement:

It is certain that none of the British plantations have been worse governed than Newfoundland, nor in any has more confusion pre-

vailed. By the constitutions granted to all the other colonies, a clearly defined system of jurisdiction was laid down; but the administration of Newfoundland was, in a great measure, an exclusively mercantile or trading government; which, as Adam Smith very justly observes, "is perhaps the very worst of all governments for any country whatever;" and a powerless planter, or fisherman, never expected, or seldom received, justice from the adventurers, or the fishing admirals, who were their servants. Mr. Reeves, in his History of Newfoundland, states, "that they had been in the habit of seeing that species of wickedness and anarchy ever since Newfoundland was frequented, from father to son; it was favourable to their old impressions, that Newfoundland was theirs, and that all the plantations were to be spoiled and devoured at their pleasure."

There is no doubt but that so arbitrary an assumption and practice of misrule produced the consequences that severity always generates; and that the planters soon reconciled themselves to the principles of deceit and falsehood, or to the schemes that would most effectually enable them to elude their engagements with the adventurers. The resident fishermen, also, who were driven from time to time out of Newfoundland, by the statute of William and Mary, generally turned out the most hardened and depraved characters wherever they went.

* * * * *

The whole of the west coast of Newfoundland, north of the bay St. George, is unsettled, although some of the lands are the best on the island.^a

The absence of any fisheries laws or regulations on the Newfoundland coast, even after the treaty of 1854 was entered into, is disclosed by the following extract from a letter, under date of September 29, 1855, written by His Excellency C. H. Darling, the Governor of Newfoundland, to The Right Honorable Sir W. Molesworth, Secretary of State for the Colonies, in which he says, referring to a report enclosed—

You will perceive by this report, which is entirely accordant with that of the late Attorney General, Mr. Archibald, dated July 5, 1853, copy of which was transmitted by my predecessor's despatch, No. 46, July 12th, 1853, that there are in fact no laws or regulations whatever relating to the Fisheries, practically in force in this Colony.^b

Joint regulations and policing under French treaties.

During the entire period covered by the French treaties, neither country was permitted to exercise any authority over the fishermen of the other, except such as might be necessary to prevent the fishermen of either country from interfering with the fishing liberties reserved by treaty to the fishermen of the other country, and the

^a U. S. Counter-Case Appendix, p. 577.

^b U. S. Counter-Case Appendix, p. 250.

policing of the treaty waters for that purpose was entrusted to the war vessels of both Governments.

In 1857 a treaty was entered into between Great Britain and France, and ratifications were exchanged on January 16 of that year; and, although it was never put into operation owing to the opposition of Newfoundland, it serves to show the position of Great Britain on the question under consideration. In this treaty it was expressly provided that a joint commission should be appointed, charged with certain duties, one of which was that "the said commissioners or umpire shall frame regulations for the exercise of concurrent rights by the parties to this Convention with a view to prevent collisions, such regulations to be approved by the respective governments; and until so approved, to be enforced provisionally; but such regulations shall be subject to revision, with the consent of both governments."^a

In 1884, and again in 1885, an arrangement was entered into between Great Britain and France, neither of which arrangements went into effect owing to the opposition of Newfoundland on points not involved in the present discussion, and in both of these arrangements it was agreed between the British and French Governments that "the superintendence and the police of the fisheries shall be exercised by the ships of war of the two countries in accordance with the conditions hereafter set forth, the commanders of these ships having sole authority and competency under these conditions in all matters relating to the fisheries, and the operations which result therefrom."^b

Also in the treaty of 1904, between Great Britain and France, which was duly ratified and became operative in that year and is still in force, it was expressly provided in Article II that France should retain for her citizens, "on a footing of equality with British subjects," the right of fishing in a portion of the territorial waters of the coast of Newfoundland, and that "the policing of the fishing on the above-mentioned portion of the coast, and for prevention of illicit liquor traffic and smuggling of spirits, shall form the subject of Regulations drawn up in agreement by the two Governments."^c

It was no doubt some such method of regulation as is shown above, that Lord Bathurst intended when he made his suggestion on the

^a U. S. Case Appendix, p. 67.

^c U. S. Case Appendix, pp. 84-85.

^b U. S. Case Appendix, p. 71.

subject in 1815, and presumably Lord Granville had the same thing in mind when he was considering from 1880 to 1883 the question of joint regulations and policing on the treaty coasts under the treaty of 1871.^a

In this connection, attention is called to the position taken by the Earl of Derby in his letter of June 12, 1884, to the Governor of Newfoundland in which he says:

The peculiar fisheries rights granted by Treaties to the French in Newfoundland invests those waters during the months of the year when fishing is carried on in them, *both by English and French fishermen*, with a character somewhat analogous to that of a *common sea for the purpose of fishery*.

It will be remembered that Mr. Root cites this statement in his letter of instructions to the American ambassador at London, dated June 30, 1906,^b and says with reference to it: "And the same observation is applicable to the situation created by the existence of American fishing rights under the Treaty of 1818."

Attention is called also to the statement made by Lord Knutsford in his letter of May 31, 1889, to Sir T. O'Brien, Governor of Newfoundland, as follows:

Her Majesty's Government is of opinion that there is no reasonable ground on which the Government of Newfoundland can object to the introduction into that Colony of Regulations similar to those which the Governments interested in the North Sea fisheries have agreed upon as best calculated to insure proper police and to prevent the occurrence of disputes among rival fishermen.^c

The situation under the treaties of 1854 and 1871.

It appears from the evidence above reviewed, that Great Britain never attempted to exercise or even to assert any right to regulate the liberty of the French fishermen to take fish on their treaty coasts under the French treaty of 1783 without the consent of France; and it has been shown that, owing to the identical character of the French and the American liberties of taking fish under their respective treaties of 1783 and 1818, there was no more reason for Great Britain to claim a right to impose such regulations in the case of the American fishermen than in the case of the French fishermen in the waters of their respective treaty coasts. It has also been shown that no attempt was

^a U. S. Case, pp. 33, 176.

^c U. S. Counter-Case Appendix, p. 325.

^b U. S. Case, p. 224.

ever made by Great Britain or the British colonies to regulate the American fishing liberty on the treaty coasts defined by the treaty of 1818 up to the adoption of the Reciprocity Treaty of 1854.

It remains, therefore, to examine the attitude of the two Governments on the question under consideration after the adoption of the Reciprocity Treaty.

The treaty of 1854 and also the treaty of 1871 extended the American fishing liberty to all the waters of the coasts of the British North American Colonies, within which the United States had renounced the liberty of taking fish by the renunciatory clause of Article I of the treaty of 1818. In the waters referred to, except the small portion thereof on the east coast of Newfoundland covered by the French treaties, the British fishermen had been entitled, prior to the adoption of the treaties of 1854 and 1871, to exclusive fishing rights; and at the time these treaties were entered into, some provincial laws had already been enacted, and were then in effect, for the regulation of British fishermen in some of those waters.

Soon after the treaty of 1854 went into operation Great Britain raised the question of whether or not the American fishermen enjoying the additional fishing liberty secured to them were under obligation to observe on the new treaty coasts fishing regulations antedating the adoption of that treaty. In the discussion of this question the United States maintained the position that no regulations affecting the American fishing liberty secured by that treaty could be enforced against the inhabitants of the United States without the consent of the United States; but, upon being asked to approve certain existing regulations, and believing that regulations, primarily intended to apply solely to British fishermen, were not designed to favor them at the expense of American fishermen, and assuming that they were not otherwise objectionable, the Secretary of State issued a circular expressing his approval of such regulations on that understanding and on the condition that, in their practical application, they were not found to impair the American fishing liberty secured by treaty. It does not appear that any attempt was ever made under the treaty of 1854 by the British or colonial authorities to so enforce such fishing regulations as to interfere with the American fishermen; and under the treaty of 1871 no attempt was made to enforce any such regulations until 1878. In that year the Fortune Bay incident arose

and the attitude taken by the British Government in that case^a showed that the position of the United States on the subject of regulations had been entirely misunderstood by Great Britain; and the question of subjecting to regulation the American liberty of fishing under these treaties was at once taken up for discussion. The diplomatic correspondence, which followed, has already been reviewed in the Case of the United States,^b and, although on the part of the United States it dealt with the question of regulations generally, whether adopted during the period covered by the treaty or in force when the treaty was entered into, yet it will be found that the British contention advanced at that time concerned only regulations in force when the treaty of 1871 was made and related only to the American fishing liberty on the treaty coasts covered by the treaties of 1854 and 1871, which were distinct from the treaty coasts under the treaty of 1818. No evidence has been, or can be, adduced of any attempt to impose regulations adopted after the date of the treaty of 1818 upon the exercise of the American fishing liberty on the treaty coasts under that treaty while the treaty of 1871 was in force. The British contention was asserted in its present form for the first time in the controversy which arose in 1906 out of the attempt of Newfoundland to enforce the Foreign Fishing Vessels Act of 1905.^c

The British contention.

In view of the foregoing statements, a distinct issue of fact between the United States and Great Britain on some features of the Question under consideration is disclosed by the following statement in the British Case:

In 1856, and on several occasions between 1866 and 1872, the attention of the United States Government was called to the necessity of fishermen obeying Colonial laws, but no objection was taken. It was not until 1878 that the present contention was first raised.^d

It is not intended in the Counter-Case to trespass upon the province of the printed and oral arguments by entering into an argumentative discussion of issues of fact; but here the evidence relied on in the British Case in support of the above-quoted statement is regarded on the part of the United States as leading to a directly contrary conclusion from that reached in the British Case, and as confirming,

^a U. S. Case, p. 162.

^c U. S. Case, pp. 209, 225.

^b U. S. Case, pp. 162-176.

^d British Case, p. 24.

rather than contradicting, the evidence produced by the United States in support of its contention. It will be appropriate, therefore, to examine briefly the evidence presented in the British Case on this point.

The Marcy Circulars.

A circular issued under date of July 9, 1853, by Mr. Marcy, when Secretary of State, and addressed to the United States Directors of Ports, is cited in the British Case as evidence in support of the British contention under Question I. In what respect this circular is supposed to apply to this Question is far from clear; for, in view of its date and the purpose of its issue, which is fully set forth by its terms, it is evident that it had nothing whatever to do with the observance of local laws or regulations on the treaty coasts, either under the treaty of 1854 or the treaty of 1818. The conditions, which this circular was intended to meet, were much the same as those which called forth Mr. Webster's circular ^a of the previous year, and grew out of the apprehension of the American fishermen that the British cruisers and the fleet of armed provincial vessels, patrolling the coasts of the British North American Colonies covered by the renunciatory clause of the treaty of 1818, would interfere with and harass American fishing vessels on those coasts, whether outside or inside the three mile limit. There had been at that time no attempt or threat to interfere with American fishermen on the treaty coasts of the treaty of 1818. But, even if the circular was intended to apply to the treaty coasts, it would contradict rather than confirm the British contention, as will appear from an examination of a portion of it which is omitted from the extract quoted in the British Case. The part quoted contains the statement that "any armed resistance on the part of the fishing vessels, either singly or combined, would be an act of private hostility which can never receive any countenance from this Government," and that "no violation of the colonial local law should be attempted, and their civil authorities and other officers should have due respect paid to them within their jurisdiction."^b These two statements, when applied to the non-treaty coasts, obviously have no relation whatever to the Question under consideration; but, as the circular is cited in connection with this Question, it was apparently intended that these two statements should be taken as applying to the treaty

^a U. S. Case, p. 122.

^b British Case, p. 25.

coasts. It, therefore, becomes necessary to point out that immediately after the portion of this circular quoted in the British Case will be found the following very important paragraph:

A naval force under the command of Commodore W. B. Shubrick, has been ordered to the fishing grounds to protect the American fishermen in their just rights.^a

In no event, however, can the circular be regarded as supporting in the slightest degree the British contention under Question I, in view of its real purpose, which, as stated in the introductory paragraph, was to prevent any disturbance or collision between the fishermen which might interrupt the negotiations, then pending, for the Reciprocity Treaty of 1854. The statement of this purpose appears in the portion of the circular immediately preceding the extract quoted in the British Case, as follows:

The President feels a deep interest in this important branch of national industry, and he is now anxiously engaged in negotiations respecting the conflicting interests of Great Britain and the United States, which may be seriously impeded, as well as greatly complicated, by any actual collision between the subjects of Great Britain and the citizens of this country. The President relying confidently on your intelligence and activity, is persuaded that you will use all the means in your power to diffuse a good understanding amongst those engaged in the fishery interest. You will warn them of the consequences of committing any unfriendly act during the progress of the pending negotiations, as any such act may postpone indefinitely the settlement of this vexatious question; and the result would be likely, in any event, to prove hazardous to themselves.^a

Within a year after the Reciprocity Treaty of 1854 went into operation, Mr. Marcy issued a circular under date of July 12, 1855, for the information of the American fishermen, on the subject of the observance by them of British colonial fisheries regulations applying to British fishermen in the waters of the treaty coasts to which American fishermen were admitted by the new treaty, and enacted before that treaty was made. In this circular he stated that "there is nothing in the Reciprocity Treaty between the United States and Great Britain which stipulates for the observance of these regulations by our fishermen", but he added that "as it is presumed they have been framed with a view to prevent injuries to the fisheries in which our fishermen now have equal interest with those of Great Britain, it is deemed reasonable and desirable that both should pay a like respect to those regulations, which were designed to preserve and increase

^a British Case Appendix, p. 201.

the productiveness and prosperity of the fisheries themselves"; and he "recommended to our citizens to direct their proceedings accordingly." This circular was accompanied by a statement that "it is believed that the principal regulations referred to above are the following:" and three sections from the revised statutes of New Brunswick were appended.

Shortly before this circular was issued, Mr. Crampton, the British Minister at Washington, had, at the request of the Lieutenant-Governor of New Brunswick, informed Mr. Marcy of the existence of certain laws and regulations affecting the fisheries in the Province of New Brunswick, and had suggested "the expediency of adopting some means of making American citizens concerned in the prosecution of the fisheries, acquainted with these laws and regulations,"^a and at the same time had arranged to submit to Mr. Marcy copies of the laws and regulations referred to for his approval.

The recommendation in Mr. Marcy's circular that certain of these regulations should be observed although there was nothing in the treaty requiring their observance apparently did not fully meet the expectations of the British Government, for it now appears from the British Case that on October 11, 1855, the Earl of Clarendon, Secretary of State for Foreign Affairs, wrote to Mr. Crampton on the subject, stating, as the view of the British Government, that under the Reciprocity Treaty American fishermen were bound to observe the *existing laws and regulations* established for the conduct of such fisheries, by which British subjects were bound.^b

Mr. Crampton apparently had an interview with Mr. Marcy, at which, according to Mr. Crampton's report of it (written nearly six months afterwards), he raised some objection to this circular, but he made it clear to Mr. Marcy that Great Britain's contention that American fishermen in the new treaty waters were bound to observe all existing laws, did not apply "if any of those laws were framed or executed so as to make an unfair discrimination in favor of British fishermen, or directly or indirectly to deprive American fishermen of the privileges secured to them by the Reciprocity Treaty," and he "called Mr. Marcy's attention to the danger of allowing to each individual the right to judge for himself whether a regulation was in

^a British Case Appendix, p. 205.

^b British Case Appendix, p. 208.

conformity with the provisions of the treaty or not, and at once to object to observe it." ^a

On Mr. Crampton's own statement of the case, therefore, it is evident that the objection to the statement in Mr. Marcy's circular that "there is nothing in the Reciprocity Treaty between the United States and Great Britain which stipulates for the observance of these regulations" was not that this statement was not true, but that it allowed each individual the right to judge for himself whether existing laws were in conformity with the provisions of the treaty or not, which was a question to be determined by the two Governments and not by the fishermen.

Mr. Marcy's view of the situation is disclosed by an examination of the revised circular prepared by him in the following year. A draft of this circular was sent by Mr. Marcy to Mr. Crampton on March 28, 1856, with the request "to return it with such remarks thereon as you may see fit to make." ^b Mr. Crampton seems to have suggested no changes in this circular except the insertion of a new passage; and although Mr. Marcy substituted a somewhat different passage, which was not entirely satisfactory to Mr. Crampton, the latter apparently raised no further objection to the circular. ^c The revised circular in its final form was as follows:

DEPARTMENT OF STATE,
Washington, March 28, 1856.

TO CHARLES H. PEASLEE, Esq.,
Collector of the Customs, Boston.

SIR: It is understood that there are certain Acts of the British North American Colonial legislatures, and also, perhaps, Executive Regulations, intended to prevent the wanton destruction of the fish which frequent the coasts of the Colonies, and injuries to the fishing thereon. It is deemed reasonable and desirable that both United States and British fishermen should pay a like respect to such laws and regulations, which are designed to preserve and increase the productiveness of the fisheries on those coasts. Such being the object of these laws and regulations, the observance of them is enforced (?) upon the citizens of the United States in like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries neither party has yielded its right to civic (?) jurisdiction over a marine league along its coast. Its laws are as obligatory upon the citizens or subjects of the other as upon its own. The laws of the British Provinces not in conflict with the provisions of the Reciprocity Treaty would be as binding upon citizens of the United

^a British Case Appendix, p. 210.

^c British Case Appendix, p. 211.

^b British Case Appendix, p. 209.

States within that jurisdiction as upon British subjects. Should they be so framed or executed as to make any discrimination in favour of the British fishermen, or to impair the rights secured to American fishermen by that Treaty, those injuriously affected by them will appeal to this Government for redress. In presenting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights or to make an unfair discrimination between the fishermen of the respective countries, or with a statement of any supposed grievance in the execution of such law or regulation, in order that the matter may be arranged by the two Governments. You will make this direction known to the masters of such fishing vessels as belong to your port, in such manner as you may deem most advisable.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.*

Reading this circular in the light of the circumstances leading up to its preparation, it is entirely consistent with the position taken by Mr. Marcy in the original circular. Certain existing fisheries laws and regulations are approved provisionally, as in the original circular, on the understanding and assumption that they were of a specified character, but such approval is qualified by the condition that in their practical application they do not prove to be "so framed or executed as to make any discrimination in favor of the British fishermen, or to impair the rights secured to American fishermen by that treaty," all of which, it will be noted, is in no way inconsistent with the statement in the original circular that "there is nothing in the Reciprocity Treaty between the United States and Great Britain which stipulates for the observance of these regulations by our fishermen." The controlling statement in the new circular is that such laws are binding only if they are not in conflict with the provisions of the Reciprocity Treaty; but, in accordance with Mr. Crampton's suggestion, the question of whether such laws are "so framed or executed as to make any discrimination in favor of the British fishermen or to impair the rights secured to American fishermen by that treaty" is not left for the fishermen themselves to determine as in the earlier circular, but is reserved as a matter to be "arranged by the two Governments."

By no possible construction can this circular be regarded as enjoining upon American fishermen the observance of the regulations referred to, if the United States had subsequently found it necessary

* U. S. Case, pp. 135, 173.

to withdraw its approval of them, either because they proved to be so framed or executed as to discriminate against American fishermen, or in any other way impaired American rights under the treaty.

The interpretation placed upon Mr. Marcy's circular by Great Britain in 1878, in the Fortune Bay controversy, which arose under the treaty of 1871, has already been shown in the Case of the United States, and need not be reviewed here, further than to repeat that Lord Salisbury then admitted that the circular was intended to apply only to fisheries regulations passed prior to the date of the treaty.^a

Inasmuch as the United States has an equal interest with Great Britain in the fisheries on the treaty coasts under the treaty of 1818, it is equally interested with Great Britain in the protection and preservation of those fisheries; and it is evident, from the course pursued by the United States, under similar circumstances, with reference to fisheries regulations under the treaty of 1854, that whenever Great Britain recognizes the right of the United States to be consulted with reference to fisheries regulations applying to American fishermen on the treaty coasts under the treaty of 1818, there will not be the slightest difficulty in reaching an agreement for the adoption of suitable regulations, if any are necessary, for the protection and preservation of those fisheries.

The effect of the treaty of 1871 on Newfoundland legislation.

The question of the effect of the treaty of 1871 upon fisheries legislation in Newfoundland arose in 1873 in connection with legislation adopted by Newfoundland for the purpose of extending the fisheries articles of that treaty to the Newfoundland coasts not open to American fishermen under the treaty of 1818. By Article XXXIII of the treaty of 1871 it was provided that the fisheries articles should extend to the Colony of Newfoundland so far as they were applicable, unless the Imperial Parliament or the Legislature of Newfoundland should not "embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing articles into effect."^b

The act adopted under this article by the Legislature of Newfoundland, after reciting that it was "expedient to provide for giving effect as regards the Island of Newfoundland and its dependencies,

^a U. S. Case, p. 173.

^b U. S. Case Appendix, p. 32.

to said articles eighteen to twenty-five of said treaty, inclusive, so far as they are applicable to this Colony " enacted that

all laws of this Colony which operate to prevent the said Articles from taking full effect, shall, so far as they so operate, be suspended and have no effect during the period mentioned in the Article numbered thirty-three in the schedule to this Act; *provided that such laws, rules and regulations relating to the time and manner of prosecuting the fisheries on the coasts of this Island shall not be in any way affected by such suspension.*^a

A copy of this act was enclosed by the British Minister at Washington in his note of June 19, 1873, to Mr. Fish, the Secretary of State, with the suggestion that the protocol to be signed as a basis for a proclamation extending the application of the treaty to Newfoundland should recite the proviso in the act of Newfoundland, which is printed above in *italics*.^b In response to this suggestion, Mr. Fish wrote to the British Minister on June 25, 1873, that—

An examination of the act passed by the legislature of Newfoundland discloses that the suspension by that legislature of the laws which operate to prevent the articles referred to of the treaty from taking full effect, is qualified and is accompanied by a proviso that certain laws, rules and regulations relating to the time and manner of prosecuting the fisheries on the coasts of Newfoundland are not to be in any way affected by such suspension.

From your note of 20th instant, I understand that, from a report made by the attorney-general of Newfoundland to the governor, it would appear that the proviso referred to contemplates a restriction, in point of time, of the herring fisheries on the western coast of the island.^c

The treaty places no limitation of time, within the period during which the articles relating to the fisheries are to remain in force, either upon the right of taking fish, on the one hand, or of the exemption from duty of fish and fish-oil, (as mentioned therein.)

I regret, therefore, that the act of the legislature of Newfoundland, which reserves a right to restrict the American right of fishing within certain periods of the year, does not appear to be such consent on the part of the colony of Newfoundland to the application of the stipulations and provisions of articles 18 to 25 of the treaty as is contemplated by the act of Congress to which you refer, and in accordance with which the proclamation of the President is to issue.^d

An attempt was made to meet Mr. Fish's objection and the Governor of Newfoundland sent to the British Minister at Washington, on July 5, 1873, a telegram in which he said :

^a British Case Appendix, p. 705.

^b U. S. Counter-Case Appendix, p. 195.

^c This report has never been shown to the United States.

^d U. S. Counter-Case Appendix, p. 196.

The proviso to which American Govt. object, has relation to enactments as to time and mode of taking herring and salmon shown by experience to be necessary for the preservation of those fisheries and consequently for the common interest of all engaged in them.^a

Supplementing this telegram, the Crown Law Officer of Newfoundland prepared a report for the Governor of Newfoundland under date of July 14, 1873, in which he said—

In the first place it will probably be conceded by the Govt. of the U. S., that the exercise of Treaty rights is at all times subject to such fair and reasonable Police or Municipal regulations of the State within which they are to be exercised as are common to all, and not inconsistent with the *bona fide* operation of the stipulations of the Treaty.

The proviso would in this view be quite unnecessary and therefore harmless but it will also be observed that it is not prospective in its terms, but has reference solely to the *status quo* of the fisheries, to which it applies, at the time of the ratification of the Treaty by the High Contracting parties—it runs thus—

“Provided that *such laws*, rules and regulations relating to the time and manner of prosecuting the fisheries on the Coasts of this Island shall not be in any way affected by such suspension.”

The laws referred to in this proviso as *such laws* are and can from the language be none other than the laws mentioned in the former part of the same section, viz. “the laws of this Colony which operate to prevent the said Articles from taking full effect” and which are to be suspended. The whole clause is with regard to this question in the present tense.

Copies of those existing laws are annexed to this despatch—they are acts passed respectively in the years 1860 and 1862, and regulate the contrivances for taking Herring and Salmon and the mode and time for using those contrivances.^b

On July 30, 1873, the British Minister wrote to the Department of State enclosing this report and stating—

that the “laws, rules and regulations” referred to in the Proviso of the 1st Section of the Newfoundland Act transmitted in my note above mentioned, were intended to benefit American as well as English fishermen, and were necessary for the preservation of herring and salmon. These laws are already in existence, and the proviso does not refer to any further restrictions.^c

The explanations contained in the telegram and report and letter above referred to proved to be unsatisfactory, and failed to remove Mr. Fish’s objection to the proviso in the act above quoted; and upon the definite refusal by the United States to accept that act as a compliance with the requirements of the treaty, the Newfoundland Legislature re-enacted the act with the proviso eliminated,

^a British Case Appendix, p. 253. ^c U. S. Counter-Case Appendix, p. 197.

^b U. S. Counter-Case Appendix, p. 198.

and the words "any law of this Colony to the contrary notwithstanding" added.^a

In commenting on this incident, the British Case states by way of explanation:

"The United States Secretary of State, Mr. Fish, objected to this proviso, and properly so, for clearly it was either unnecessary, or else it was a modification of the treaty. If, by the treaty, United States fishermen were bound to observe the local regulations, the proviso was unnecessary and mere surplusage; and if they were not so bound, the proviso altered the treaty. The statute was therefore re-enacted without this proviso."^b

Clearly, however, the proviso was not omitted by Newfoundland, because it was regarded as unnecessary on the theory that the restrictions referred to could be enforced without it. As shown by the telegram from the Governor of Newfoundland and the letter from the British Minister, an urgent request was made that the proviso be retained on the ground that the regulations affected by it related "to time and mode of taking herring and salmon" and were "necessary for the preservation of those fisheries, and consequently for the common interest of all engaged in them," and also that the proviso applied only to already existing legislation; so that the refusal of the United States to accept the proviso because, for the reasons stated by Mr. Fish in his note from which the above extracts are quoted, the laws excepted by it did, under the terms of the amendment of the act by Newfoundland, "prevent such articles from taking full effect", distinctly raised an issue as to Newfoundland's right under the treaty to enforce such laws without the consent of the United States.

In the circumstances, the amendment of the act, as required by the United States, was clearly intended to meet this objection in order that the benefits to be derived from the treaty might be extended to Newfoundland.

The suggestion that in adopting this amendment Newfoundland, nevertheless, intended to enforce against American fishermen the objectionable laws, which is implied in the explanation advanced in the British Case, involves a breach of good faith on the part of Newfoundland which the United States would be unwilling to attribute to that government. The alternative suggestion offered by the British explanation that "if American fishermen were not bound

^a British Case Appendix, p. 706.

^b British Case, p. 31.

by the laws objected to, the proviso altered the treaty " obviously is the only interpretation of the action of Newfoundland which the Tribunal can adopt without discrediting the course pursued by that government.

Other evidence presented by Great Britain.

The remaining evidence presented in the British Case in support of the British contention on this question consists of an extract from a letter from Mr. Cardwell, the British Colonial Secretary, addressed to the Lords of the Admiralty under date of April 12, 1866, and also a sentence taken from a circular issued in 1870 by the Secretary of the Treasury of the United States.

So far as Mr. Cardwell's letter is concerned, it appears that it was not communicated to the United States until over four years after it was written, and that no attempt had been made during the intervening period to give practical effect to the views expressed by Mr. Cardwell in the extract quoted in the British Case.^a

This letter dealt chiefly with the "bays" question, which was then the only feature of the fisheries controversy under discussion between the United States and Great Britain; and nothing was said in the note from Mr. Thornton to Mr. Fish enclosing this letter to indicate that the British Government desired to raise at that time a new issue which they had refrained from raising during the four years following the termination of the Reciprocity Treaty in 1866.

The British Case infers an implied approval by the United States of the views, expressed by Mr. Cardwell in the extract referred to, in regard to the authority of Great Britain to regulate the fisheries, from the fact that no exception was taken at that time to its terms by the United States.^b It is clear, however, that the situation did not then require a statement of the position of the United States, and any expression of its disapproval of the views expressed by Mr. Cardwell on the subject now under consideration was uncalled for and would have been premature.

That the United States did not agree with Mr. Cardwell's views, as expressed in the extract quoted in the British Case, was conclusively shown by the position taken by the United States soon after the adoption of the treaty of 1871, with reference to the effect of that treaty upon fisheries legislation in Newfoundland, which is

^a U. S. Case Appendix, pp. 597, 602.

^b British Case, p. 30.

hereinabove reviewed, and again shortly afterwards by the position taken by the United States in the Fortune Bay case.

The Fortune Bay case and the position of the United States in the controversy which grew out of it have already been fully reviewed in the Case of the United States,^a and do not require further examination here.

The Treasury Circulars.

It will be found upon an examination of the surrounding circumstances and the context that the extract from the Treasury circular of June 9, 1870, quoted in the British Case, refers only to laws and regulations in force in the waters of the Canadian coast covered by the renunciatory clause of the treaty, and has no relation whatever to the enforcement of regulations in the waters of the treaty coasts under the treaty of 1818, so that it has no bearing upon the issues raised under Question I.

The circular announces that the Canadian authorities had terminated the system of granting fishing licenses under the Act of May 22, 1868, respecting fishing by foreign vessels, which act by its own terms applied only to the waters of Canada not included in the treaty coasts defined by the treaty of 1818, on which coasts licenses from the Canadian Government were not necessary to entitle American fishermen to exercise their treaty liberty of fishing. The termination by the Canadian Government of the license system, which had been in force ever since the Reciprocity Treaty expired in 1866, was announced by an Order in Council of the Canadian Government adopted January 8, 1870, and communicated to Mr. Fish, the Secretary of State, by Mr. Thornton, the British Minister at Washington, in his note of April 14, 1870;^b and it was in consequence of this change of policy that the Treasury circular of May 16, 1870, was issued, as appears from the letter of April 23, 1870, from the Secretary of State to Mr. Boutwell, the Secretary of the Treasury.^c When this circular was issued, Mr. Fish had not been informed that, in addition to adopting the order in council referred to, the Canadian Parliament had, by an act adopted on the 12th of May, 1870, amended the Act of May 22, 1868, under which the licenses had theretofore been issued, so as to authorize the immediate seizure of a foreign

^a U. S. Case, p. 162.

^c U. S. Counted-Case Appendix, p. 187.

^b U. S. Case Appendix, p. 580.

vessel found in Canadian waters without waiting for the expiration of twenty-four hours after a warning requiring it to depart therefrom. A copy of this amendment was communicated to Mr. Fish by the British Minister in his note of May 20, 1870,^a four days after the date of this circular; and on the 26th of May, the British Minister communicated to Mr. Fish the further information that under the instructions to be issued to the British and Colonial officers for the enforcement of this law, it would be given application only to vessels within three miles of land,^a thus making it clear that it was not intended to renew the attempt to assert Canadian jurisdiction over American vessels fishing outside of the three mile limit in the larger bays where the United States had always maintained that the renunciatory clause of this treaty had no application.

The change made in the Act of May 22, 1868, by the amendment of May 12, 1870, and the disclaimer on the part of Great Britain of any intention to enforce the act thus amended upon American fishing vessels except in the waters of the coasts covered by the renunciatory clause of the treaty within three marine miles of the land, made it appropriate that the circular should be changed so as to inform the American fishermen of the effect of the amendment of the Act of 1868 and to instruct them that they must respect its provisions. An amended circular was therefore issued on June 9, in which, at the close of the first paragraph of the old circular, reciting that the right of American fishermen under the treaty of 1818 to enter bays and harbors on the non-treaty coasts for the purposes of shelter, repairing damages, purchasing wood and obtaining water and for no other purpose whatever was "subject to such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges reserved to them as above expressed," the extract quoted in the British Case was inserted, which is as follows:

Fishermen of the United States are bound to respect the British laws and regulations for the regulation and preservation of the fisheries to the same extent to which they are applicable to British or Canadian fishermen.

Immediately after this clause, the reference to the law of May 22, 1868, follows, and here was inserted in the new circular the reference to the Act of May 12, 1870, amending that law, thus indicating clearly

^a U. S. Case Appendix, p. 589.

the particular laws and regulations referred to in the new clause as those which the American fishermen were bound to respect as restrictions adopted under the treaty to prevent them from taking, drying, and curing fish on the coasts covered by the renunciatory clause, or in any other manner abusing the privileges reserved to them in that clause.

Before either of these circulars was issued, Mr. Thornton, in response to a direct inquiry on the subject from Mr. Fish, had made it clear that the change in the Canadian policy, in regard to issuing licenses, indicated by the Order in Council of January 8, 1870, had not the slightest bearing upon the exercise by American fishermen of their treaty liberty of fishing in the waters of the Canadian portion of the American treaty coasts under the treaty of 1818;^a and, as has already been shown, no attempt had been made up to that time by the Canadian Government to enforce any laws or regulations against American fishermen in the waters of the Canadian portion of the treaty coasts under the treaty of 1818, and no question relating to the treaty coasts was under discussion between the United States and Great Britain at the time these circulars were issued. In fact, no attempt was ever made by Canada or Great Britain to enforce any fisheries regulations against American fishermen on the Canadian portion of the treaty coasts under the treaty of 1818. As has hereinabove been shown,^b the question of the observance of local laws by American fishermen on the treaty coasts first arose in 1878 under the treaty of 1871, and involved the enforcement of Newfoundland and not Canadian laws; and the first attempt to enforce regulations against American fishermen on the treaty coasts defined by the treaty of 1818 occurred in the treaty waters on the Newfoundland coast under the Newfoundland foreign fishing vessels act of 1905.

Moreover, it will be remembered that soon after the treaty of 1871 was adopted, and again in the Fortune Bay controversy in 1878, the Secretary of State of the United States had occasion to inform Great Britain of the position of the United States on the subject of fisheries regulations on coasts where the liberty to fish was secured to American fishermen by treaty, and on both of these occasions the Secretary of State made it clear that the United States would object to and resist any attempt to enforce such regulations without its consent.

^a U. S. Case, p. 146.

^b Supra, p. 26.

The reasonableness of regulations.

In the discussion of the subject under consideration in 1906, between Mr. Root and Sir Edward Grey, after pointing out that "the claim now asserted that the Colony of Newfoundland is entitled at will to regulate the exercise of the American treaty right is equivalent to a claim of power to completely destroy that right," Mr. Root said:

This Government is far from desiring that the Newfoundland fisheries shall go unregulated. It is willing and ready now, as it has always been, to join with the Government of Great Britain in agreeing upon all reasonable and suitable regulations for the due control of the fishermen of both countries in the exercise of their rights, but this Government cannot permit the exercise of these rights, to be subject to the will of the Colony of Newfoundland. The Government of the United States cannot recognize the authority of Great Britain or of its Colony to determine whether American citizens shall fish on Sunday. The Government of Newfoundland cannot be permitted to make entry and clearance at a Newfoundland custom-house and the payment of a tax for the support of Newfoundland lighthouses conditions to the exercise of the American right of fishing. If it be shown that these things are reasonable the Government of the United States will agree to them, but it cannot submit to have them imposed upon it without its consent. This position is not a matter of theory. It is of vital and present importance, for the plain object of recent legislation of the Colony of Newfoundland has been practically to destroy the value of American rights under the Treaty of 1818. Those rights are exercised in competition with the fishermen and merchants of Newfoundland. The situation of the Newfoundland fishermen residing upon the shore and making the shore their base of operations, and of the American fishermen coming long distances with expensive outfits, devoting long periods to the voyage to the fishing grounds and back to the market, obliged to fish rapidly in order to make up for that loss of time, and making ships their base of operations, are so different that it is easy to frame regulations which will offer slight inconvenience to the dwellers on shore and be practically prohibitory to the fishermen from the coasts of Maine and Massachusetts; and, if the grant of this competitive right is to be subject to such laws as our competitors choose to make, it is a worthless right.^a

As an example of the character of the regulations which are regarded by the colonial authorities as reasonable and which would be enforced against American fishermen in the treaty waters, if the concurrence of the United States to such enforcement was unnecessary, the attention of the Tribunal is called to the Newfoundland Foreign Fishing-Vessels Act of 1905. In the diplomatic correspondence con-

^a U. S. Case, p. 225.

ducted by Mr. Root and Sir Edward Grey in 1906, Mr. Root pointed out some of the objectionable features of this act, referring to the provisions of sections 1 and 3 as follows:

It seems plain that the provisions above quoted constitute a warrant to the officers named to interfere with and violate the rights of American fishing-vessels under the Treaty of 1818.

The 1st section authorizes any of the officers named to stop an American vessel while fishing upon the Treaty Coast and compel it to leave the fishing grounds, to prevent it from going to the places where the fish may be, to prevent it departing with the fish which it may have taken, and to detain it for an indefinite period during a search of the cargo, and an examination of the master under oath under a heavy penalty.

It is to be observed that this section does not require that the vessel shall have been charged with any violation of the laws of Newfoundland, or even that she shall have been suspected of having violated the laws of Newfoundland as a condition precedent to compelling it to desist from the exercise of its Treaty rights, and virtually seizing it and taking it into port. In the consideration of this provision, it is unnecessary to discuss any question as to the extent to which American vessels may be interfered with in the exercise of their Treaty rights pursuant to judicial proceedings based upon a charge of violation of law, or even upon reasonable ground to believe that any law has been violated, for the authority of the Acts authorized appears to be part of no such proceeding.

When we consider that the minor officials named in the Act, invested with this extraordinary and summary power, are presumptively members of the fishing communities, in competition with which the American fishermen are following their calling, it is plain that in denying the right of the Government of Newfoundland to do what this section provides for we are not merely dealing with a theoretical question, but with the probability of serious injustice.

The 3rd section of the Act, above quoted in full, makes the presence on board of an American vessel of the fish, gear—the implements necessary to the exercise of the Treaty right—*prima facie* evidence of a criminal offence against the laws of Newfoundland, and it also makes the presence on board the vessel of the fish which the vessel has a right to take under Treaty *prima facie* evidence of a criminal offence under the laws of Newfoundland. This certainly cannot be justified. It is, in effect, providing that the exercise of the Treaty right shall be *prima facie* evidence of a crime.

I need not argue with the Government of Great Britain that the 1st section of this Act purports to authorize the very kind of official conduct which led to the establishment in England of the rule against unreasonable searches and seizures, now firmly embedded in the jurisprudence of both nations. Nor need I argue that American vessels are of right entitled to have on them in the waters of the Treaty Coast both fish of every kind, and the gear for the taking of fish, and that a law undertaking to make that possession *prima facie* proof of crime deprives them of that presumption of innocence to which all citizens of Great Britain and America are entitled. When the Legislature of Newfoundland denies these rights to American fishing-vessels, it im-

poses upon them a heavy penalty for the exercise of their rights under the Treaty, and we may reasonably apprehend that this penalty will be so severe in its practical effect as to be an effectual bar to the exercise of the Treaty right.

I feel bound to urge that the Government of Great Britain shall advise the Newfoundland Government that the provisions of law which I have quoted are inconsistent with the rights of the United States under the Treaty of 1818, and ought to be repealed; and that, in the meantime, and without any avoidable delay, the Governor in Council shall be requested by a Proclamation which he is authorized to issue under the 8th section of the Act respecting Foreign Fishing-Vessels, to suspend the operation of the Act.^a

It is true that Sir Edward Grey in reply expressed the view that Mr. Root's objections to the act were met by section 7, which preserved "the rights and privileges granted by treaty to the subjects of any State in amity with His Majesty." His explanation of the effect of this provision was as follows:

In view of this provision, His Majesty's Government are unable to agree with the United States' Government in regarding the provisions of sections 1 and 3 as "constituting a warrant to the officers named to interfere with and violate" American rights under the Convention of 1818. On the contrary, they consider section 7 as, in effect, a prohibition of any vexatious interference with the exercise of the Treaty rights whether of American or of French fishermen. As regards section 3, they admit that the possession by inhabitants of the United States of any fish and gear which they may lawfully take or use in the exercise of their rights under the Convention of 1818 cannot properly be made *prima facie* evidence of the commission of an offence, and, bearing in mind the provisions of section 7, they cannot believe that a Court of Law would take a different view.^b

It is doubtful, however, whether the act would have been interpreted in this way if the United States had not been entitled to object to its enforcement, for the original intention of the Newfoundland Legislature in passing the act was altogether in conflict with the explanation advanced by Sir Edward Grey, as appears from the following extract from Mr. Root's reply to Sir Edward Grey's note:

The Premier of Newfoundland in his speech in the Newfoundland Parliament, delivered on the 12th April, 1905, in support of the Foreign Fishing Bill, made the following declaration:

"This Bill is framed specially to prevent the American fishermen from coming into the bays, harbours, and creeks of the coast of Newfoundland for the purpose of obtaining herring, caplin, and squid for fishing purposes."

And this further declaration:

"This communication is important evidence as to the value of the position we occupy as mistress of the northern seas so far as the fish-

^a U. S. Case, p. 210.

^b U. S. Case, p. 219.

eries are concerned. Herein was evidence that it is within the power of the Legislature of this Colony to make or mar our competitors to the North Atlantic fisheries. Here was evidence that by refusing or restricting the necessary bait supply, we can bring our foreign competitors to realize their dependency upon us. One of the objects of this legislation is to bring the fishing interests of Gloucester and New England to a realization of their dependence upon the bait supplies of this Colony. No measure could have been devised having more clearly for its object the conserving, safeguarding, and protecting of the interests of those concerned in the fisheries of the Colony."^a

Mr. Root's comment on these declarations was:

It will be observed that there is here the very frankest possible disavowal of any intention to so regulate the fisheries as to be fair to the American fishermen. The purpose is, under cover of the exercise of the power of regulation, to exclude the American fishermen. The Government of the United States surely cannot be expected to see with complacency the rights of its citizens subjected to this kind of regulation.^a

^a U. S. Case, p. 225.

QUESTION TWO.

Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

The British Case states at the outset that "the short question is whether those inhabitants may employ fishermen of other nationalities to fish on their behalf;"^a and this is the view of the United States as to the scope and meaning of the Question, provided that it is understood as referring only to fishermen of other nationalities who are not inhabitants of the United States at the time of their employment. Obviously, fishermen of other nationalities who are inhabitants of the United States, are entitled to the enjoyment of the fishing liberty under the treaty, irrespective of employment for that purpose by other inhabitants of the United States. The determination of what persons are inhabitants of the United States, and what persons are not inhabitants of the United States is not called for by this Question, and cannot properly be submitted to the Tribunal for decision.

It is evident, therefore, that this Question asks simply whether or not the treaty permits the inhabitants of the United States to employ as members of the fishing crews of their vessels on the treaty coasts persons of other nationalities who are not inhabitants of the United States. The British Case, however, brings up for discussion in connection with this Question the further question of whether under this treaty Great Britain parted with its control over its own subjects, which the United States regards as wholly outside of the scope and meaning of Question 2.

Referring to this new question the British Case says:

But, apart from the general question as to the employment of foreigners, it is submitted that the right of the British and Colonial legislatures to prevent the employment of British subjects by Americans upon these fisheries is absolutely indisputable.^b

^a British Case, p. 51.

^b British Case, p. 58.

And, after stating the British position on this point and reserving "further discussion of the point until they are in possession of the Case of the United States," the British Case concludes with the contention—

That the Colonial legislatures and the Imperial Parliament retain the power of prohibiting any of His Majesty's subjects from engaging as fishermen in American vessels, and that the exercise of this power is in no way inconsistent with the treaty.^a

This contention, it will be observed, relates solely to the effect of the treaty upon the observance of British laws by British subjects, whereas Question 2, as shown above, according to the understanding of it accepted by both Governments, asks merely whether the treaty permits the inhabitants of the United States to employ persons not inhabitants of the United States for fishing purposes in treaty waters. The Question certainly does not ask whether there is anything in the treaty requiring or authorizing British subjects to engage themselves as members of the fishing crews of the inhabitants of the United States, if they are prohibited or even if they are not prohibited from so doing by British laws, which is all that is involved in the British contention above set forth. The United States, therefore, does not regard this contention of Great Britain as within the scope and meaning of the Question submitted for the decision of the Tribunal.

The positions of the two Governments.

The respective positions of the two Governments on this Question are disclosed in the diplomatic correspondence of 1906 conducted by Mr. Root and Sir Edward Grey, which is fully set forth in the Case of the United States. As appears from this correspondence, both sides concurred in the view that the fishing carried on under the treaty of 1818 was essentially "a ship fishing"; and, although Great Britain asserted that the treaty conferred no rights on fishing vessels as such, yet it admitted that the inhabitants of the United States were entitled to the same rights of fishing for their vessels as for themselves. Sir Edyard Grey said on this point in his memorandum of February 2, 1906:

As regards the treatment of American vessels from which American fishermen exercise the Treaty right of fishery, His Majesty's Government are prepared to admit that, although the Convention confers no rights on American vessels as such, yet since the Ameri-

^a British Case, p. 59.

can fishery is essentially a ship fishery, no law of Newfoundland should be enforced on American fishing-vessels which would unreasonably interfere with the exercise by the American fishermen on board of their rights under the Convention.^a

Great Britain contended, however, that the national character of an American fishing vessel did not entitle fishermen employed by it who were not inhabitants of the United States to fish in treaty waters.

The position of the United States on this point is shown in the following extract from Mr. Root's letter of June 30, 1906:

It is true that the Memorandum itself [Sir E. Grey's] uses the same form of expression when asserting that American ships have committed breaches of the Colonial Customs Law, and ascribing to them duties, obligations, omissions, and purposes which the Memorandum describes. Yet we may agree that ships, strictly speaking, can have no rights or duties, and that whenever the Memorandum, or the letter upon which it comments, speaks of a ship's rights and duties, it but uses a convenient and customary form of describing the owner's or master's right and duties in respect of the ship. As this is conceded to be essentially "a ship fishing," and as neither in 1818 nor since could there be an American ship not owned and officered by Americans, it is probably quite unimportant which form of expression is used.

I find in the Memorandum no substantial dissent from the first proposition of my note to Sir Mortimer Durand of the 19th October, 1905, that any American vessel is entitled to go into waters of the Treaty coast and take fish of any kind, and that she derives this right from the Treaty and not from any authority proceeding from the Government of Newfoundland.

Nor do I find any substantial dissent from the fourth, fifth, and sixth propositions, which relate to the method of establishing the nationality of the vessel entering the Treaty waters for the purpose of fishing, unless it be intended, by the comments on those propositions, to assert that the British Government is entitled to claim that when an American goes with his vessel upon the Treaty coast for the purpose of fishing, or with his vessel enters the bays or harbors of the coast for the purpose of shelter and of repairing damages therein, or of purchasing wood, or of obtaining water, he is bound to furnish evidence that all the members of his crew are inhabitants of the United States. We cannot for a moment admit the existence of any such limitation upon our Treaty rights. The liberty assured to us by the Treaty plainly includes the right to use all the means customary or appropriate for fishing upon the sea, not only ships and nets and boats, but crews to handle the ships and the nets and the boats. No right to control or limit the means which Americans shall use in fishing can be admitted unless it is provided in the terms of the Treaty, and no right to question the nationality of the crews employed is contained in the terms of the Treaty. In 1818, and ever since, it has been customary for the owners and masters of fishing vessels to employ crews of various nationalities. During all that

^a U. S. Case, p. 215.

period I am not able to discover that any suggestion has ever been made of a right to scrutinize the nationality of the crews employed in the vessels through which the Treaty right has been exercised.^a

Replying to Mr. Root's objections, Sir Edward Grey, in his note of June 20, 1907, restated the British contention as follows:

Mr. Root's language, however, appears to imply that the condition which His Majesty's Government seek to impose on the right of fishing is a condition upon the entry of an American vessel into the Treaty waters for the purpose of fishing. This is not the case. His Majesty's Government do not contend that every person on board an American vessel fishing in the Treaty waters must be an inhabitant of the United States, but merely that no such person is entitled to take fish unless he is an inhabitant of the United States. This appears to meet Mr. Root's argument that the contention of His Majesty's Government involves as a corollary that no American vessel would be entitled to enter the waters of British North America (in which inhabitants of the United States are debarred from fishing by the Convention of 1818) for any of the four specified purposes, unless all the members of the crew are inhabitants of the United States.^b

The British contention, therefore, is merely that no person on board an American vessel is entitled to take fish unless he is an inhabitant of the United States.

The United States on the other hand contends that although such persons who are not inhabitants of the United States may not be entitled to take fish for themselves yet the liberty of the inhabitants of the United States to take fish under the treaty may be exercised by employing such persons as part of the fishing crew of their vessels to take fish for them.

With the exception of some of the grounds upon which the British contention is based in the British Case, which are briefly examined below, it is unnecessary to review here the evidence presented either by the United States or Great Britain in support of their respective contentions on this Question.

Objections to the British contention.

The British Case suggests as one of the principal grounds for construing the treaty in accordance with the British contention that such construction would give effect to the intentions of the negotiators. In support of this view, it is stated that an argument was made by the American negotiators (although no such argument is reported in the published records of the negotiations) "that there was a large

^a U. S. Case, p. 220.

^b U. S. Case, p. 235.

population in the United States wholly dependent for their means of livelihood on the fisheries, and they appealed to the benevolence and humanity of Great Britain to preserve this industry to this community." It is also stated that "Mr. John Quincy Adams in an eloquent passage [in "The Fisheries and the Mississippi"^a] spoke of the 10,000 men and their wives and children, for whom the fisheries provided daily bread"; and further that "equally important, in the view of the negotiators was the fact that the fisheries were a nursery for the seamen of the country". "These were reasons", says the British Case, "and reasons of weight, for giving liberties to fishermen dwelling in the United States to ply their calling on the treaty shores, but they were no reasons for giving liberties to trade in fish taken by fishermen of other countries".^b

Unfortunately for the contentions of the British Case, the object which the British negotiators had in view was not to establish a nursery for American seamen, nor to provide daily bread for the fishermen and their wives and children, but to encourage and make profitable the American fisheries as a source of revenue for the benefit of Great Britain. This was a recognized policy of the British statesmanship of those days, and was admitted by Lord Bathurst to be the reason for the willingness of Great Britain to enter into a negotiation for a new treaty, as a result of his controversy with Mr. Adams in 1815. It will be remembered that, as stated in the Case of the United States, "Mr. Adams not only argued that the United States was entitled as a matter of right to the continued enjoyment of the inshore fisheries reserved to the United States under the treaty of 1783, but he also urged considerations of policy and expediency as an inducement for Great Britain to recognize such right."^c Mr. Adams said at his interview with Lord Bathurst on September 14, 1815:

These fisheries afforded the means of subsistence to multitudes of people who were destitute of any other; they also afforded the means of remittance to Great Britain in payment for articles of her manufactures exported to America. It was well understood to be the policy of Great Britain that no unnecessary stimulus should be given to the manufactures in the United States, which would diminish the importation of those from Great Britain. But, by depriving the fishermen

^a Published in 1822, four years after the treaty of 1818.

^b British Case, p. 56.

^c U. S. Case, p. 31.

of the United States of this source of subsistence, the result must be to throw them back upon the country, and drive them to the resort of manufacturing for themselves; while, on the other hand, it would cut off the means of making remittances in payment for the manufactures of Great Britain.^a

Again, in writing to Lord Bathurst on September 25, 1815, he said that these fisheries—

far from operating as an injury to Great Britain, had the ultimate result of pouring into her lap a great portion of the profits of their hardy and laborious industry; that these fisheries afforded the means of subsistence to a numerous class of people in the United States whose habit of life had been fashioned to no other occupation, and whose fortunes had allotted them no other possession; that to another, and, perhaps, equally numerous class of our citizens, they afforded the means of remittance and payment for the productions of British industry and ingenuity, imported from the manufactures of this united kingdom.^b

The reference to an "equally numerous class of our citizens" who were not fishermen, will be noted. These clearly were the citizens who owned fishing vessels and employed fishermen, and otherwise had money invested in the fishing industry.

The considerations of expediency and policy urged by Mr. Adams appealed to Lord Bathurst, and he wrote on October 30, 1815, in reply to Mr. Adams—

But, though Great Britain can never admit the claim of the United States to enjoy those liberties with respect to the fisheries, as matter of right, she is by no means insensible to some of those considerations with which the letter of the American minister concludes.^b

That the considerations, to which he refers, were not those of "benevolence and humanity", which the British Case attributes to the British negotiators of the treaty of 1818, is made clear by his explanation that, although the British Government did not admit Mr. Adams' claim that the American fishermen were entitled to a special indulgence, yet his Government "do feel that the enjoyment of the liberties formerly used by the inhabitants of the United States, may be very conducive to their national and individual prosperity."^c

As a result of these considerations, Lord Bathurst stated that Great Britain was willing to enter upon negotiations for a new treaty, and ultimately the treaty of 1818 was the outcome.

^a U. S. Case, p. 31.

^b U. S. Case, p. 32.

^c U. S. Case, p. 33.

It is evident, therefore, that the purpose of the British negotiators in entering into this treaty was not to foster an American navy, nor for the benefit of the fishermen, nor for any sentimental reasons of "benevolence and humanity", but to insure "national and individual prosperity". The British Government was less interested in the fishermen than in that other "equally numerous class of our citizens" to whom the fisheries afford "the means of remittance and payment for the productions of British industry and ingenuity, imported from the manufactures of this united kingdom"; and the fishing liberty established by the treaty was designed to insure the prosperity of the numerous class of people who profited by the fishing business by employing the fishermen, and otherwise investing money in it; and the more fishermen they employed, the better for that purpose.

These were reasons, and reasons of weight, adopting the language of the British Case, "for giving liberties to trade in fish taken by the fishermen of other countries"; and, unlike the opposing reasons advanced in the British Case, they were of a character to appeal equally to the negotiators of both countries.

Much reliance is placed by the British Case in supporting its contention on this Question upon the following statement made in 1880 by Mr. Evarts in discussing the treaty of 1871:

There was, to be sure, a restriction imposed upon both countries which excluded both equally from extending the enjoyment of either's share of the common fishery beyond the "inhabitants of the United States" on the one side, and "Her Britannic Majesty's subjects" on the other, thus disabling either Government from impairing the share of the other by introducing foreign fishermen into the common fishery.^a

In commenting on this statement, the British Case says:

But the contention of the United States to-day is that they can, under the treaty of 1818, do the very thing which Mr. Evarts stated was contrary to the corresponding provisions of the treaty of 1871. They contend that they can introduce foreign fishermen into these fisheries, although by so doing they must impair the share of the British fishermen therein.^a

The British Case fails to state, however, that Great Britain did not agree with the views expressed by Mr. Evarts, and that so far as they have any application to the treaty of 1818, Great Britain distinctly repudiated any such views by undertaking in the treaty of 1857 with France to introduce foreign fishermen into these fisheries.

^a British Case, p. 57.

By Article III of that treaty, it was agreed that "French subjects shall have the right, concurrently with British subjects, to fish on the coasts of Labrador from Blanc Sablon to Cape Charles and of North Belleisle, together with liberty to dry and cure fish on any of the portions of North Belleisle aforesaid, which shall not be settled when this Convention shall come into operation;"^a which provisions would have resulted, if the treaty had gone into operation, in the very thing which the British Case now claims that the United States cannot do.

It is a self-evident fact that the objection to the introduction of foreign fishermen in British waters on the ground that it would impair the share of the British fishermen therein cannot apply to the employment on American vessels of British fishermen in those waters. Great Britain's objection to having British fishermen employed on American vessels must, therefore, rest on other grounds, but what these grounds are is not disclosed in the British Case. Necessarily the acceptance of employment on American vessels by British fishermen is voluntary on their part, and fishing from the same vessels would seem to be a convenient and harmonious way of enjoying the common liberty of fishing under the treaty.

With reference to the employment of foreigners on American vessels, the various objections raised in the British Case, in opposition to the contentions of the United States on this feature of the Question, are matters of argument rather than evidence, and do not require examination here. It should be noted in passing, however, that, as already pointed out, the employment on American vessels of foreigners who are inhabitants of the United States cannot be objected to under the treaty, and that no question about such employment is included within the scope of this Question.

It should also be noted that, in discussing this feature of the Question, the British Case seems to have assumed, as a basis for argument, that the liberty of fishing under the treaty was secured only for the benefit of a specific class of the inhabitants of the United States, and that this class consisted of the fishermen, and that they were entitled to take fish only for themselves, as appears from the statement in the British Case that "a liberty to a specific class of persons to take fish themselves is necessarily restricted

^a U. S. Case, Appendix, p. 60.

according to the number and ability of those persons; but there is no ascertainable limit to the amount of fish that may be taken if those persons can employ others to act for them." ^a Clearly, however, no such interpretation of the language of the treaty is permissible, for by its express terms the American liberty of fishing is for the benefit of any of the inhabitants of the United States, and is not restricted to the fishermen, so that any of the persons who are inhabitants of the United States are entitled to employ, or be employed by, any other persons who are inhabitants of the United States in the enjoyment of the fishing liberty under this treaty.

^a British Case, p. 58.

QUESTION THREE.

Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbor or other dues, or to any other similar requirement or condition or exaction?

It will be perceived from an examination of Article I of the treaty of 1818 that the only liberties referred to in it are the liberty of taking fish and the liberty of drying and curing fish, and that these two liberties may be exercised by the inhabitants of the United States only on the treaty coasts, in distinction from the coasts covered by the renunciatory clause of that article.

It follows, therefore, that this Question relates only to the treatment of the inhabitants of the United States, in respect of the matters specified, when exercising these two liberties on the treaty coasts.

Irrelevant questions discussed in British Case.

The British Case, nevertheless, attempts to extend this Question to the treatment of American fishing vessels, in respect of the matters specified, when exercising commercial privileges. The liberties referred to in this Question are stated in the British Case to be the two liberties above mentioned, and—

3. In addition to these two liberties, the United States asserts that its fishermen are entitled to have, for their fishing vessels, the same commercial privileges as are accorded by agreement or otherwise to United States trading vessels generally.^a

In order to bring this new element into the Question, the British Case then proceeds to restate the Question for that purpose as follows:

The question then seems to be whether United States fishing vessels are entitled * * * (if the United States' contention be correct) to exercise all the privileges accorded to trading vessels and yet be exempt from the supervision which all nations exercise over all vessels, (not only foreign but their own) coming into their harbors

^a British Case, p. 61.

and discharging upon their territory; and exempt also from contribution to the up-keep of lights necessary to the navigation of the waters.^a

It is evident that this is a question altogether outside of the scope and meaning of the Question under consideration, and clearly it is not one of the other Questions submitted to the Tribunal for decision. Furthermore, it does not correctly state the position of the United States in respect of the trading privileges which the fishing vessels of the inhabitants of the United States are entitled to enjoy, or the obligations of fishing vessels when enjoying trading privileges. The subject of the enjoyment of trading privileges on the treaty coasts is discussed under Question 7, and the contention of the United States is there shown to be that there is nothing in Article I of the treaty of 1818 which prevents the inhabitants of the United States, whose vessels resort to the treaty coasts for the purpose of exercising fishing liberties, from claiming for those vessels "when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally."^b

This certainly is not a contention that American fishing vessels are entitled "to exercise all the privileges accorded to trading vessels and yet be exempt from the supervision which all nations exercise over all vessels," etc. As a matter of fact no such contention has ever been made by the United States, and it is not now contended that the fishing vessels of the inhabitants of the United States, when enjoying trading privileges, are exempt from the supervision which all nations exercise over trading vessels. It is only when such fishing vessels are deprived of the privileges of trading vessels that the United States objects to having them, while exercising their treaty liberty of fishing, subjected to the conditions and exactions imposed upon trading vessels.

The evidence presented by Great Britain.

The British Case fails to show on what authority its assertion of the contention attributed by it to the United States is founded. No such contention will be found in the diplomatic correspondence between the United States and Great Britain, and the position of

^a British Case, p. 61.

^b *Infra*, p. 105.

the United States on this subject was clearly understood and correctly stated by Sir Edward Grey in his correspondence with Mr. Root, as appears from the following extract taken from his memorandum of February 2, 1906, which is quoted in the British Case:

This is the first time, His Majesty's Government are informed, that American vessels have refused to pay these dues, and it is presumed that the refusal is based on the denial by the Colonial Government of the trading privileges allowed in past years.^a

The subject of the treatment of American fishing vessels, when enjoying commercial privileges on the treaty coasts, may, therefore, be eliminated from the discussion of this Question, and with it practically all of the evidence presented in the British Case in support of its contentions must also be eliminated. This evidence consists of certain statutes of Great Britain and its Colonies and of the United States relating to the treatment of foreign trading vessels having no treaty right to enter the territorial waters of those countries, and, therefore, is irrelevant and immaterial as applied to the fishing vessels of the United States which are not engaged in trade, but have a treaty right to enter the waters of the treaty coasts for fishing purposes.

The only statute cited in the British Case which deals specifically with entering or reporting fishing vessels at custom-houses is the British Act of 1775 (15 Geo. III, Cap. 31), which provides that such vessels—

shall not be liable to any restraint or regulation with respect to days or hours of working, nor to make any entry at the custom-house of Newfoundland, except a report to be made by the master on his first arrival there, and at his clearing out from thence; and that a fee not exceeding 2s 6d shall and may be taken by the officers of the customs at Newfoundland for each such report; and that no other fee shall be taken or demanded by any officer of the customs there upon any other pretence whatsoever relative to the said fishery, any law, custom or usage to the contrary notwithstanding.^b

But even in this case it appears that by sections V and VI of this act, the fishing vessels referred to were at liberty to engage in trading, being authorized to import provisions into Newfoundland.^c Furthermore, it must be borne in mind that the fishing vessels referred to were not resorting to Newfoundland waters in the exercise of a treaty right, as in the case of the American vessels under the treaty

^a British Case, p. 62. ^b British Case, p. 65. ^c British Case, pp. 64 and 65.

of 1818, but merely under the authority of this same statute which imposed upon them the requirement of reporting at the custom-house. It is important to note also that the "custom-house" referred to in this statute was at St. John, which was the only port of entry in Newfoundland at that time, and that there were no custom-houses on the treaty coast when the treaty of 1818. was entered into.^a

With reference to harbor and light dues, no evidence is produced in the British Case showing any authority to impose such dues upon American fishing vessels when resorting to the treaty coasts under the treaty of 1818 for the sole purpose of engaging in their treaty liberty of fishing, and an examination of the statutes cited will show that, in their application to fishing vessels generally, it has been customary to exempt such vessels from the payment of such dues. No statute is cited imposing light-house or harbor dues on local fishing vessels anywhere on the treaty coasts defined by the treaty of 1818, and it appears that Newfoundland fishermen are expressly exempted from the payment of light-house dues under the Newfoundland statute of 1899,^b which is now in force, imposing such duties upon trading vessels. This exemption of domestic fishing vessels from the payment of such dues, was recognized by the British Government in the recent discussion of this subject in 1907 as creating a limitation upon the contention of Newfoundland that such dues might be exacted from American fishing vessels on the treaty coasts, as appears from the following extract from Sir Edward Grey's note of June 20, 1907, to the American Ambassador at London:

These dues are payable by all vessels of whatever description and nationality, other than coasting and fishing vessels owned and registered in the Colony. As, however, vessels of the latter class are under certain conditions exempt either wholly or in part from payment, His Majesty's Government consider that it would be unfair to introduce any discrimination against American vessels in this respect, and it is proposed that the demand for light dues should be waived under the same conditions as in the case of the Newfoundland vessels.^c

So also, if equality of treatment is to be arrived at, the great excess in the number of light-houses on the non-treaty coasts of Newfoundland over those on the treaty coasts, will have to be taken into consideration, there being on the treaty coasts only nine lights on the southern coast of Newfoundland, and eleven on the entire west

^a U. S. Counter-Case Appendix, p. 71.

^b British Case, p. 77.

^c U. S. Case, p. 237.

coast of Newfoundland, and seven on the Labrador coast, twenty-seven in all, of which seven are maintained by the Canadian Government for the benefit of the Trans-Atlantic steamship service. Of the twenty lights maintained by Newfoundland, thirteen have been established within the last ten years and five of these during the year 1909. On the non-treaty coast of Newfoundland, which is considerably less in extent than the treaty coasts, there are not less than seventy-seven light-houses.^a In this connection it will be noted that, as stated in the British Case—

In England, prior to the Merchant Shipping (Mercantile Marine Fund) Act, 1898, the light dues were levied in respect of each light which the vessel passed on her journey, that is, each light from which the vessel might derive benefit.^b

Sir Edward Grey also admitted in his memorandum of February 2, 1906 that—

The United States Government would undoubtedly be entitled to complain if the fishery of inhabitants of the United States were seriously interfered with by a vexatious and arbitrary enforcement of the colonial customs laws, etc.^c

The real question at issue.

The United States certainly concurs in the views expressed by Sir Edward Grey in the extracts above quoted; but, irrespective of whether or not the colonial customs laws are vexatious and arbitrary, and whether or not light and harbor dues are imposed on local fishing vessels, it is not admitted on the part of the United States that the exercise by the inhabitants of the United States of their treaty liberty of fishing may be subjected, in the language of this Question "without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbor or other dues, or to any other similar requirement or condition or exaction."

The position of the United States on the issues presented by this Question is fully stated by Mr. Root in his reply of July 20, 1906, to Sir Edward Grey's memorandum of February 2, 1906, as follows:

The Government of Newfoundland cannot be permitted to make entry and clearance at a Newfoundland custom-house and the payment of a tax for the support of Newfoundland lighthouses conditions to the exercise of the American right of fishing. If it be shown that these things are reasonable the Government of the United

^a U. S. Counter-Case Appendix, p. 608.

^b British Case, p. 71.

^c British Case, p. 61.

States will agree to them, but it cannot submit to have them imposed upon it without its consent. This position is not a matter of theory. It is of vital and present importance, for the plain object of recent legislation of the Colony of Newfoundland has been practically to destroy the value of American rights under the Treaty of 1818.^a

So far as the contentions of the United States on these issues depend upon questions of law or upon the construction of the language of the treaty, or the value and effect of the evidence presented on both sides, they will be discussed in the arguments to be addressed to the Tribunal on behalf of the United States, and do not require examination in the Counter-Case; neither is it necessary to review here the evidence already presented in the Case of the United States in support of its contentions. It is sufficient for the present to note that, as appears from the foregoing examination of the evidence presented in the British Case, such evidence fails to show that, at the time this treaty was entered into, it was regarded on either side as having the meaning now contended for by Great Britain with reference to this Question, or that any such interpretation has since then been established in its practical operation by the actions of the two Governments or either of them.

^a U. S. Case, p. 225.

QUESTION FOUR.

Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbors for shelter, repairs, wood or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbor or other dues, or entering or reporting at custom-houses or any similar conditions?

In the discussion of this Question in the British Case, it is stated that "the considerations which have been advanced in support of the contention made by Great Britain under the third Question apply equally here, and are adopted for the purposes of this Question";^a and the same statement may be made with reference to the objections raised on the part of the United States in answer to the British contentions in relation to that Question. Under the present Question, as under Question 3, no distinction is made in the British Case between the treatment of fishing vessels enjoying no commercial privileges, but having a treaty right of entry into the coastal waters for certain specified purposes, and the treatment of trading vessels enjoying commercial privileges in such waters, but having no treaty right of entry.

No question involving the obligations of American fishing vessels, or the treatment of such vessels when enjoying commercial privileges on the non-treaty coasts, is included in this Question or in any of the other Questions submitted to this Tribunal for decision. In this Question, therefore, as in Question 3, the obligations and treatment of American fishing vessels, when permitted to enjoy general commercial privileges, must be eliminated from the discussion. As pointed out in the Case of the United States, the action complained of is not the imposition of harbor dues, or the requirement of customs entry in respect of American vessels permitted to enjoy commercial privileges on these coasts, but the imposition of such conditions and

^a British Case, p. 79.

exactions upon American fishing vessels exercising their treaty right of entering the bays and harbors on these coasts for the purposes specified in the treaty, when at the same time such vessels are not permitted to enjoy commercial privileges.^a

The subject of the treatment and obligations of American fishing vessels when enjoying commercial privileges on the non-treaty coasts, being eliminated from the discussion, it is unnecessary at this time to discuss whether or not subsequently to the treaty of 1818 American fishing vessels have become entitled to commercial privileges on the non-treaty coasts. It is sufficient for the purposes of the present discussion, to state that the United States does not contend that under the treaty of 1818, independent of any subsequent action, American fishing vessels are entitled to general trading privileges on the non-treaty coasts.

The scope of this question.

This Question must, therefore, be considered solely with reference to the treatment of American fishermen entering the bays and harbors on the non-treaty coasts for the four purposes specified in the renunciatory clause of the treaty but not for trading purposes; in other words, the situation to which this Question applies, is exactly the situation which existed at the time when the treaty was entered into. This situation, and the effect of the treaty upon it, are stated in the British Case as follows:

At the date of the treaty no American vessel had a right to enter any port in British North America for commercial purposes. Those ports were absolutely closed to American traders, just as the ports of the United States were closed to British traders. The treaty made an exception to this general prohibition, and permitted vessels of a particular kind, to wit, fishing vessels, to have access to the British shores for certain limited purposes, but it did not do away with the general prohibition against entry for other purposes; it did not confer on fishing-vessels those commercial privileges which were denied at that time, and for years afterwards, to vessels of all other kinds.^b

In these circumstances, the treaty provided that American fishermen admitted to the bays and harbors of the non-treaty coast for the four purposes specified should be under "such restrictions as may

^a U. S. Case, p. 197.

^b British Case, p. 146.

be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them." This was an express declaration of the conditions under which American fishermen "shall be admitted to enter such bays or harbors." No other conditions are specified in the treaty, or implied by its language; and this Question deals only with the restrictions thus expressly provided for in the treaty. The Question excludes all other considerations, and asks merely whether the provision, that American fishermen entering certain bays for the four purposes specified "shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them", authorizes the imposition of "restrictions making the exercise of such privileges conditional upon the payment of light or harbor or other dues, or entering or reporting at custom-houses, or any similar conditions."

It will be observed that the treaty permits only such restrictions as will prevent American fishermen from "taking, drying, or curing fish" in such waters, "or in any other manner whatever *abusing* the privileges hereby reserved to them," the enjoyment of which is secured unconditionally by the treaty, so that only such restrictions as are necessary for preventing their abuse can be imposed.

Light and harbor dues.

The imposition of light-house or harbor dues certainly can afford no safeguard against taking, drying, or curing fish in those waters, or otherwise abusing the privileges of shelter, repairing damages, purchasing wood and obtaining water which are guaranteed by the treaty; and a requirement that American vessels pay such dues, therefore, would in effect impose upon the enjoyment of the treaty privileges a restriction which is not contemplated by the treaty, and would be objectionable for that reason.

Customs requirements.

Restrictions requiring entering or reporting at custom-houses, as a condition of enjoying any of the four privileges reserved by the treaty, would also be objectionable. The provision of the treaty authorizing the imposition of restrictions must be interpreted

in the light of the conditions surrounding the exercise of the privileges reserved; and the restrictions imposed must not be inconsistent with, or of such a character as to prevent, the full enjoyment of those privileges. In speaking of the Canadian and Newfoundland coasts, the British Case refers to "their large extent of sea-coast, their thickly-wooded shores, their numerous bays and harbors, their scattered population, and the prevalence of fog."^a Taking into consideration the extent and character of these coasts and the consequent difficulty of finding a custom-house, it is evident that a requirement that a fishing vessel should report at a custom-house whenever it availed itself of any of the privileges of taking shelter, or repairing damages, or purchasing wood, or obtaining water in any bay or harbor on these coasts, would in most cases practically amount to a denial of the enjoyment of such privileges. Moreover, the requirement of reporting at a custom-house would have no possible value as a restriction to prevent taking, drying, or curing fish; and such a requirement would be entirely unnecessary to prevent smuggling on the greater part of the non-treaty coasts, owing to their unsettled character. It follows, therefore, that any such restriction applying to all fishing vessels on all parts of the non-treaty coasts would exceed the authority reserved by the treaty, which authorizes only such restrictions as are necessary to prevent the acts specified.

Other exactions.

With reference to the portion of this Question which relates to the imposition of other conditions or exactions, all that has been said above applies equally here, and, in addition, attention is called to the opinion of the Law Officers of the Crown, rendered in 1841. It will be remember that one of the questions, upon which the opinion of these officers was asked, was—

Have American Fishermen the right to enter the Bays and Harbors of this Province [Nova Scotia] for the purpose of purchasing wood or obtaining water, having provided neither of these articles at the commencement of their voyages, in their own countries; or have they the right of entering such Bays and Harbors in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles for the voyage of such Fishing craft has been exhausted or destroyed.^b

^a British Case, p. 66.

^b U. S. Case, p. 105.

This question was answered by the Law Officers as follows:

By the Convention, the liberty of entering the Bays and Harbors of Nova Scotia for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any condition expressed or implied, limiting it to vessels duly provided at the commencement of the voyage; and we are of opinion that no such condition can be attached to the enjoyment of the liberty.^a

It appears, therefore, that even during the period when Great Britain was seeking by every means possible to enforce a narrow and strict construction of the treaty against the contentions of the United States, it was admitted on the part of Great Britain that, inasmuch as the right of entering bays and harbors on the non-treaty coasts for the purposes specified was conceded in general terms by the treaty, no restrictions could be imposed upon such right in addition to those specifically provided for in the treaty.

The evidence presented on the part of the United States in support of its contention can be more conveniently discussed in connection with the argument of this Question before the Tribunal and does not require further examination here.

^a U. S. Case, p. 107.

QUESTION FIVE.

From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbors" referred to in the said Article?

This Question calls for an interpretation of the meaning of the provisions of the renunciatory clause of Article I of the treaty of 1818, which are as follows:

And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above mentioned limits.

A knowledge of the situation existing prior to and at the time of making the treaty of 1818 is essential to a proper understanding of the true intent and meaning of the renunciatory clause. The Case of the United States, therefore, presented a full review of the historical conditions leading up to that treaty and of the circumstances in which it was made, and the controversy and differences which it was intended to settle. It was shown that the antecedents and surroundings of the treaty and the language used establish beyond question that the negotiators intended, in adopting the renunciatory clause, that it should apply only to the exercise of the liberties, therein mentioned, on or within three marine miles of the shore, and that the bays, creeks, and harbors referred to were those inside of such limit of three marine miles.

Inasmuch as the British Case in the discussion of this Question has not referred to any evidence relating to the negotiations leading up to the treaty of 1818, or to the differences on account of which that treaty was made, no further discussion of the position of the United States on this feature of the Question is required in advance of the printed and oral arguments.

So also, no evidence is produced in the British Case which calls for a further discussion of the statement made in the Case of the

United States, or of the evidence supporting it, that for the first twenty-five years following the date of the treaty both governments adopted, in giving it practical operation, the interpretation of the renunciatory clause now contended for by the United States.

It will be remembered that, as shown in the Case of the United States, the right of American fishermen to fish in any of the bays on the non-treaty coasts up to the distance of three marine miles from the shore was never questioned until Nova Scotia originated the headland theory in 1839, and no attempt was made to put this theory into practice until the seizure of the schooner *Washington* in 1843—exactly twenty-five years after the date of the treaty.^a

Under this headland theory Great Britain, instigated by the Province of Nova Scotia, contended with apparent reluctance that the three mile limit of exclusion for American fishing vessels should be measured from a line drawn across the outside portion of the bays, instead of from their shores, and that the bays referred to in the treaty comprised all the indentations of the non-treaty coasts, irrespective of their width. In other words, under the headland theory wherever headlands could be found on the non-treaty coasts, regardless of their distance apart, a line connecting them was to serve as the base from which to measure the three mile limit of exclusion.

The discussion which ensued, and the positions taken by Great Britain and the United States on the questions thus presented have been fully reviewed in the Case of the United States, and it is there shown that since the Claims Commission of 1853 decided against the British contention in the case of the schooner *Washington*, above referred to, and in the similar case of the schooner *Argus*, Great Britain has refrained from attempting, and has restrained its colonies from attempting to give any further practical application of the headland theory.^b

Great Britain's present contention.

In the discussion of the Question now under consideration, it is stated in the British Case that "the real question for determination is the meaning of the word 'bays' in the following clause of article one of the Convention of 1818," referring to the renunciatory clause of that article. The British Case further states that "His Majesty's

^a U. S. Case, pp. 95 and 108.

^b U. S. Counter-Case Appendix, p. 293.

Government contend that the negotiators of the treaty meant by 'bay' all those waters which, at the time, everyone knew as bays,"^a and it appears from the discussion of this Question in the British Case that this definition of "bays" is intended to include the waters of all the indentations of the coast regardless of their width. It further appears that the conclusion reached in the British Case on this Question is that the three marine miles referred to should be measured "in the case of all bays, creeks, and harbors, from a line drawn across the mouths of such bays, creeks, or harbors."^b

It will be perceived that the interpretation now contended for in the British Case is based on the assumption that the words "bays, creeks, or harbors of His Britannic Majesty's Dominions in America," as used in the renunciatory clause of the treaty, were intended to be descriptive of territorial waters of Great Britain, and that all the indentations on the non-treaty coasts were regarded, at the time this treaty was made, as territorial waters of Great Britain.

The reply of the United States.

On the issue thus presented by Great Britain, the United States maintains, as it has maintained ever since the question was raised under the headland theory, that, at the time this treaty was entered into, none of the waters on the non-treaty coasts more than three miles from shore were regarded as territorial waters of Great Britain, whether considered with reference to the position taken by the two Governments in the negotiations which led up to this treaty, or with reference to British jurisdiction over such water at that time; and consequently that the territorial waters of Great Britain did not include any bays which were more than six marine miles in width.

The evidence.

The extent of the proof required to establish the contentions advanced in the British Case is indicated by the position taken by Great Britain in 1870, as set forth in the following extract from a British Foreign Office memorandum "respecting a Commission to

^a British Case, p. 83.

^b British Case, p. 122.

settle limits of the right to exclusive Fishery on the Coast of British North America”:

The right of Great Britain to exclude American fishermen from waters within three miles of the coast is unambiguous, and it is believed, uncontested. But there appears to be some doubt what are the waters described as within three miles of bays, creeks, and harbors. When a bay is less than six miles broad, its waters are within the three miles limit, and therefore clearly within the meaning of the Treaty; but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's Dominions.

This is a question which has to be considered in each particular case with regard to International Law and usage. When such a bay, etc., is not a bay of Her Majesty's Dominions, the American fishermen will be entitled to fish in it, except within three miles of the “coast”; “when it is a bay of Her Majesty's Dominions” they will not be entitled to fish within three miles of it, that is to say, (it is presumed), within three miles of a line drawn from headland to headland.^a

In support of its present contentions the British Case states that “the circumstances existing at the time of the negotiations of 1818 themselves negative the contention that the term ‘bays of His Britannic Majesty's Dominions’, as used in the treaty, was not intended to include the whole of the bays on the British coast;”^b and it is asserted that “at the beginning of the last century, Great Britain and the United States were putting forward wide claims to jurisdiction over territorial waters.”^b

An examination of the evidence presented in the British Case, upon which these assertions are based, will show that it fails to justify the conclusions reached. No reference is made in the British Case to the positions taken on this subject by the two Governments in the negotiations which resulted in the treaty of 1818, or in the discussion which followed the War of 1812. In fact the British Case avoids any reference to the position of either Government on this question during the period between the War of 1812 and the conclusion of the treaty of 1818. Evidence relating to the negotiations resulting in the unratified treaty of 1806 is the nearest approach in the British Case to the situation in 1818, and in discussing those negotiations the British Case makes no mention of the position then taken by Great Britain which was altogether inconsistent with the present British contention that Great Britain was “putting forward wide claims to jurisdiction over territorial waters.”

^a U. S. Case, p. 148.

^b British Case, p. 121.

It is stated that in 1804 "the question of the extent of territorial waters became important in connection with the British assertion of the right to search for British seamen in the United States ships on the high seas;"^a and much attention is paid to expressions on the part of the United States of a desire, at that time and for that reason, to establish a wide strip of territorial waters along the coasts of the United States within which British vessels might be restrained from forcibly seizing and impressing American seamen. The British Case omits to state, however, that the position taken by Great Britain at that time was that three marine miles from shore was the limit of maritime jurisdiction, and could not be extended by one nation beyond that distance from its shores so as to affect the rights of another nation, without the consent or acquiescence of that nation. This position was insisted upon by Great Britain in the negotiations with the United States resulting in the unratified treaty of 1806, which related in part to maritime jurisdiction, and by which as stated in the British Case, "an attempt was made to fix by agreement the limit of United States jurisdiction upon its coasts;"^a but all that is said about this treaty in the British Case is that in these negotiations the United States suggested that a fair distance would be as far out "as the well-defined path of the gulf stream," and that "after negotiations the limit was fixed at '5 marine miles from the shore,' but the convention never became effective."^b It is of interest to note, therefore, that the limit of five marine miles, fixed by this treaty, was regarded by Great Britain as an extension of the maritime jurisdiction of the United States, and that such extension was qualified by a limitation in the treaty that it should not apply to nations "which shall not have agreed to respect the said *special* limit or line of maritime jurisdiction herein agreed upon,"^c the limit of "a cannon shot, or three marine miles from the said coast" being recognized as the limit applying to them. It will be found further, that in these negotiations the extension of marine jurisdiction to five marine miles, agreed upon in the treaty, was regarded as wholly dependent upon the treaty stipulations, and

^a British Case, p. 85.^c U. S. Counter-Case Appendix, p. 22.^b British Case, p. 86.

that such extension was only for the particular purposes specified in the treaty, which are set forth in Article 12 as follows:

And whereas it is expedient to make special provisions respecting the maritime jurisdiction of the high contracting parties on the coast of their respective possessions in North America on account of peculiar circumstances belonging to those coasts, it is agreed that in all cases where one of the said high contracting parties shall be engaged in war, and the other shall be at peace, the belligerent Power shall not stop except for the purpose hereafter mentioned, the vessels of the neutral Power, or the unarmed vessels of other nations, within five marine miles from the shore belonging to the said neutral Power on the American seas.

Provided That the said stipulation shall not take effect in favor of the ships of any nation or nations which shall not have agreed to respect the limits aforesaid, as the line of maritime jurisdiction of the said neutral state. And it is further stipulated, that if either of the high contracting parties shall be at war with any nation or nations which shall not have agreed to respect the said special limit or line of maritime jurisdiction herein agreed upon, such contracting party shall have the right to stop or search any vessel beyond the limit of a cannon shot, or three marine miles from the said coast of the neutral Power, for the purpose of ascertaining the nation to which such vessel shall belong; with respect to the ships and property of the nation or nations not having agreed to respect the aforesaid line of jurisdiction, the belligerent Power shall exercise the same rights as if this article did not exist; and the several provisions stipulated by this article shall have full force and effect only during the continuance of the present treaty.^a

In this connection attention is called to the following extract from the letter written on January 3, 1807, by Mr. Monroe and Mr. Pinckney, Commissioners on the part of the United States, to Mr. Madison, the Secretary of State, transmitting the treaty then just concluded, with reference to which they say:

The twelfth article establishes the maritime jurisdiction of the United States to the distance of five marine miles from the coast, in favor of their own vessels and the unarmed vessels of all other Powers who may acknowledge the same limit. This Government [Great Britain] contended that three marine miles was the greatest extent to which the pretension could be carried by the law of nations, and resisted, at the instance of the Admiralty and the law officers of the Crown, in Doctor's Commons, the concession, which was supposed to be made by this arrangement, with great earnestness. The ministry seemed to view our claim in the light of an innovation of dangerous tendency, whose admission, especially at the present time, might be deemed an act unworthy of the Government. The outrages lately committed on our coast, which made some provision of the kind necessary as a useful lesson to the commanders of their squadrons, and a reparation for the insults offered to our Government, increased

^a U. S. Counter-Case Appendix, p. 22.

the difficulty of obtaining any accommodation whatever. The British commissioners did not fail to represent that which is contained in this article, as a strong proof of a conciliating disposition in their Government towards the Government and people of the United States.^a

The remaining evidence presented in the British Case consists of extracts from the diplomatic correspondence between the two Governments and references to their actions since the treaty of 1818 was entered into, and purports to show their understanding of the true intent and meaning of its provisions with reference to this Question. It will be found that these extracts and actions are cited for the most part, without regard to the context of the extracts and the circumstances surrounding the actions, and in consequence the evidence thus presented fails to give an accurate understanding of the positions of the two Governments throughout this controversy. Inasmuch, however, as the Case of the United States has fully reviewed the history of this controversy and the positions taken on both sides, as disclosed by the diplomatic correspondence and official acts, both before and since the treaty of 1818 was entered into, it does not seem necessary in the Counter-Case to examine in detail the disconnected and incomplete fragments of the evidence as presented in the British Case, in order to show their proper bearing and relation to the Question under consideration.

The assertion in the British Case that the exercise of jurisdiction by the United States over Delaware and Chesapeake Bays supports the British contention with respect to territorial jurisdiction over bays more than six marine miles in width does not require examination in the Counter-Case, as it raises a question of law rather than a question of fact, and will be discussed in the printed and oral arguments.

So also, the discussion of the position of the United States, in reply to the assertions and contentions advanced in the British Case, which rest on argument or questions of law, is reserved for the printed and oral arguments.

^a U. S. Counter-Case Appendix, p. 96.

QUESTION SIX.

Have the inhabitants of the United States the liberty, under the said Article or otherwise, to take fish in the bays, harbors, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

The bays, creeks and harbors referred to in this Question are understood on the part of the United States as being such indentations only as are less than six marine miles in width. The position of the United States is, and always has been, that the right of American vessels to resort to the waters of indentations more than six marine miles in width up to three marine miles of the land does not depend upon any treaty stipulations with Great Britain.

It was shown in the Case of the United States that this Question was first suggested by the Premier of Newfoundland in 1905, after a lapse of nearly ninety years since the treaty was made, although during that period "the United States has always asserted the right of the American fishermen to take fish in the waters referred to, and American fishermen have, ever since the treaty was made, openly exercised their right to take fish in these waters without objection or interference by the Newfoundland Government,"^a and now for the first time the grounds upon which Great Britain supports its contention on this Question are disclosed to the United States in the British Case. In the circumstances it is not surprising to find that these grounds are far from convincing.

The British contention.

Great Britain contends "that the liberty to fish on the southern, western, and northern coasts of Newfoundland, and on the shores of the Magdalen Islands, does not include the liberty to fish in the bays, harbours, and creeks on such coasts or shores."^b An examination of the British Case shows that in urging this contention, Great Britain completely disregards everything that has happened since

^a U. S. Case, p. 244.

^b British Case, p. 126.

1818, during which period, as established in the Case of the United States, usage and custom and the action of both Governments have combined to give an interpretation to the treaty in its practical application entirely inconsistent with the interpretation now contended for by Great Britain.

In supporting this novel contention the British Case relies almost wholly upon the assumption that an intention to exclude American fishermen from the bays, creeks, and harbors of the Magdalen Islands and of Newfoundland, within the limits of the treaty coasts, may be attributed to the negotiators of the treaty; and, in order to give effect to this assumed attitude of the negotiators, the British Case undertakes further to establish for the word "coast," as used in the treaty, a special significance without which the desired meaning cannot be read into the treaty.

It will be perceived that, if Great Britain fails in proving either that the language used in the treaty has the desired meaning, or that in using it the negotiators intended to give it that meaning, the entire British contention must fail. Moreover, the intention must be shown to have been mutual on the part of the United States and Great Britain and not merely an undisclosed intention on the part of Great Britain; and the mere possibility of reading the desired meaning into the treaty would not in itself prove that the treaty was not susceptible of the interpretation which both Governments have given it in actual practice for the last ninety years.

But, even if evidence could be produced to show that the negotiators had the intention attributed to them by the British case and that the language was susceptible of the meaning desired, such evidence in itself would still be insufficient to justify the denial, at this late date, of a liberty claimed by the United States as a right ever since this treaty was entered into and acquiesced in by Great Britain without question for upwards of ninety years. In this connection attention is called to a feature of the Question which seems to have been overlooked in the British case. The Question is not simply whether the inhabitants of the United States have the liberty under Article I of the treaty to take fish in the bays, harbors, and creeks referred to, but "*have the inhabitants of the United States the liberty, under the said Article or otherwise, to take fish in the bays, harbors, and creeks,*" etc.

It is unnecessary, however, to go into this feature of the Question here for it will be shown that neither of the two points relied upon in support of the British contention is established by the evidence presented in the British Case.

The language of the treaty.

Taking up first the meaning of the language used, it will be found that upon this point the British Case, after analyzing some of the phrases used in the treaty, for the purpose of showing that the meaning now contended for can be read into it, reaches the conclusion that "the word 'coast' is used throughout the treaty as something distinct from bays, harbors and creeks." No definition is furnished of what a coast distinct from bays, harbors, and creeks would be; or where the line separating such a coast from bays, harbors, and creeks would run, or where, for instance, the inner and outer lines of such a coast would run with reference to St. George's Bay, Newfoundland, which is upwards of thirty miles in width.

It is not, however, the purpose of the Counter-Case to anticipate the printed and oral arguments by entering upon an argumentative discussion of the internal evidence furnished by the use of certain words and phrases in the treaty. For the present it will be sufficient to point out that the British contention that the word "coast", as used throughout this article, was intended to apply only to waters outside of the bays, harbors, and creeks, is wholly destroyed by its use in an entirely different sense in the phrase "from Mount Joli on the southern coast of Labrador", where it distinctly refers to the land adjacent to the water, and by the admission in the British Case that "the word 'shores' in Article one of the treaty is used to express the same idea as 'coasts' in the other parts of the Article."^a

The intention of the Parties.

With reference to the intention of the negotiators of the treaty to exclude American fishermen from the bays, creeks, and harbors referred to, which, as above stated, is the other ground relied upon in the British Case to support the novel interpretation now contended for by Newfoundland, the only evidence which is cited on this point in the British Case is of such an inconclusive and ambiguous character as to discredit the contention it is intended to support.

^a British Case, p. 126.

It may fairly be assumed at the outset that, if the negotiators of the treaty of 1818 had under consideration any such unusual arrangement as the reservation of the bays, creeks, and harbors within the limits of the treaty coasts, some mention of it would have been made in the course of the negotiations, and that either an agreement or a disagreement on the point would have been reported by them to their respective Governments; or, even if there had been any such intention on the part of the British Plenipotentiaries, which they did not disclose to the American Plenipotentiaries, it must be assumed that they would have reported to their Government the course of the negotiations and the effect of the treaty on that point; or, again, if the American Plenipotentiaries had been willing to agree to any such arrangement, it is reasonable to suppose that it would have been expressed in the treaty by a special clause for that purpose, instead of being concealed in language which necessitates the resort to inference and ingenious interpretation in order to give it the desired meaning.

Neither in the official records of the negotiations nor in the reports of either the British or the American Plenipotentiaries to their respective Governments is mention made of any such intention on the part of the negotiators on either side, and it is of peculiar significance that it never occurred to the British Government or to anyone else to attribute any such intention to the negotiators until after the treaty had been in force for nearly ninety years, during which period the understanding of both Great Britain and the United States with respect to the effect of the treaty upon the subject under consideration was distinctly shown by their actions to be exactly the reverse of the intention which Newfoundland now attributes to the negotiators of the treaty.

Bearing these considerations in mind the Tribunal is invited to consider the character of the evidence which is presented in the British Case to overcome the overwhelming weight of evidence against the present contention of Great Britain.

The evidence relied on by Great Britain.

The evidence, upon which the Tribunal is asked to hold that the negotiators had such an intention as is attributed to them in the British Case, consists of (1) an extract from a letter written in 1815 by Lord Bathurst to Mr. Adams; (2) a statement in a letter of in-

structions written in the same year by Lord Bathurst to Governor Keats of Newfoundland; and (3) a reference in general terms to the French claim on a portion of the coast referred to, which it is said "may have supplied an additional reason for not extending the grant to bays, harbours and creeks." It will be convenient to examine this evidence in the order in which it is arranged in the British Case.

Lord Bathurst's letter to Mr. Adams.

The extract from Lord Bathurst's letter of October 30, 1815, to Mr. Adams, quoted in the British Case, contains the statement that "it was not of fair competition that His Majesty's Government had reason to complain, but of the preoccupation of British harbors and creeks in North America by the fishing vessels of the United States, and the forcible exclusion of British vessels from places where the fishery might be most advantageously conducted."^a

The British Case fails to explain how this statement can be regarded as showing that the negotiators in 1818 intended to exclude American vessels from fishing in harbors or creeks on the coasts to be assigned for the use of American fishermen, to say nothing of bays, which are not even mentioned, and obviously the conclusion drawn from it in the British Case is wholly inconsistent with the willingness of the British Plenipotentiaries, as demonstrated in the same treaty, to admit American fishermen to the bays, harbors, and creeks on the southern part of the coast of Newfoundland, and on the coast of Labrador for the purpose of curing and drying fish.

The only possible bearing which the above extract from Lord Bathurst's letter could have had upon the treaty of 1818, was quite different from that attributed to it here, as has already been shown in the Case of the United States^b and in the Counter-Case of the United States^c in discussing Question I.

Lord Bathurst's letter to Governor Keats.

The letter written in 1815 by Lord Bathurst to Governor Keats of Newfoundland is referred to in the British Case as follows:

In the same year in the instructions with regard to fishing by the United States (which were communicated to the United States Government) special stress was laid upon the exclusion of its fishermen from bays, harbours, rivers, creeks, and inlets of all His Majesty's

^a British Case, p. 124.

^b U. S. Case, p. 67.

^c Supra, p. 9.

possessions. It is obvious that, in those places, the fisheries were of special and peculiar value, and the treaty of 1818, it is contended, gave effect to this consideration.^a

If the statement that these instructions were communicated to the United States is intended to mean that they were communicated prior to the conclusion of the treaty of 1818, the United States questions the accuracy of the assertion, and calls attention to the failure of the British Case to cite any evidence in support of the assertion, or even to state the exact date when the alleged communication was made.

With reference to the "special stress," which this letter is represented as laying upon the exclusion of American fishermen from bays, harbors, etc., it will be remembered that during the period between the War of 1812 and the treaty of 1818, Great Britain denied the right of American fishermen to enter any of the bays, harbors, creeks, or inlets of the British Colonies within the three mile limit on the ground that the fisheries provisions of the treaty of 1783, under which such right was held, had been abrogated by the War of 1812.^b The United States on the other hand was equally insistent that the right of American fishermen to fish in the waters referred to survived that war, and this position was not relinquished by the United States in making the treaty of 1818, and has never since been relinquished. Lord Bathurst's letter to Governor Keats was merely a statement of one side of a disputed question, and even on the assumption that it was communicated to the United States, it is difficult to see what particular influence it could have had upon the negotiations resulting in the treaty of 1818.

Moreover, as in the case of Lord Bathurst's letter to Mr. Adams, the willingness of the British negotiators to admit American fishermen to the bays, creeks, and harbors of Labrador and the southern part of Newfoundland covered by the treaty is clearly inconsistent with the inference which is drawn in the British Case from the "special stress" laid upon excluding American fishermen from all bays, creeks, and harbors. This inconsistency is recognized in the British Case; and, although it is silent with regard to the bays, creeks, and harbors on the southern part of Newfoundland, an attempt is made to meet the difficulty with reference to the coast of Labrador by the explanation that "it was less important to restrict the rights conferred in

^a British Case, p. 125.

^b U. S. Case, p. 14.

connection with Labrador than to limit the liberty granted in respect of the territorial waters of the *more populous island of Newfoundland.*"^a Here again is an assertion of fact on a point to which much importance is attached in the British Case, but in support of which no evidence is cited; and it is of interest to test the value of this assertion by contrasting it with an extract, already quoted above, from "The Case for the Colony" prepared in 1890 by the People's Delegates of Newfoundland, as follows:

During the whole period covered by the dates of these treaties, from 1713 to 1815, Newfoundland was, in fact, nothing but a station on the other side of the Atlantic, to which the fishermen of England and France annually resorted for the fishing or summer season only. Although by the terms of the treaties the "sovereignty" was declared to be in Great Britain, yet, in fact, colonisation or settlement was not only not existing or contemplated, but was even prohibited by Great Britain under severe penalties.^b

Attention is also called to the extract above quoted from M'Gregor's History (published in 1832), as follows:

The whole of the west coast of Newfoundland, north of the bay St. George, is unsettled, although some of the lands are the best on the island.^c

The French claim.

The French fishing claim on a portion of the coasts under consideration, which furnishes the remaining grounds upon which Great Britain relies in attributing to the negotiators of the treaty of 1818 an intention to exclude the American fishermen from the bays, harbors, and creeks mentioned, is referred to in the British Case as follows:

Moreover, the existence of the French claim to a large portion of the coast, with regard to which these liberties were conceded, may have supplied an additional reason for not extending the grant to bays, harbours, and creeks, in which, for the reasons above indicated, there would be a greater probability of collision with the French fishermen.^a

The British Case omits to state that this French claim, the existence of which "may have supplied an additional reason for not extending the grant to bays, harbours, and creeks" in 1818, antedated the treaty of 1783 between the United States and Great Britain, and by that treaty, it will be remembered, the American fishermen were placed upon an exact equality with British fishermen in the use of all the waters of Newfoundland for fishing purposes.

^a British Case, p. 125.

^b Supra, p. 20.

^c Supra, p. 22.

Moreover, the same claim was still being asserted by France when the treaties of 1854 and 1871 between the United States and Great Britain were entered into; and under both of those treaties American fishermen admittedly were given the liberty to fish in the bays, creeks, and harbors on all the rest of the French treaty coast not covered by the treaty of 1818.

The British Case fails to explain the character and extent of the French claim referred to in the above extract, and that, so far as it related to fishing liberties in the waters of the French treaty coast of Newfoundland, Great Britain has always insisted that British fishermen had fishing liberties in common with the French fishermen, as has already been shown in the discussion of Question I in this Counter-Case.^a The extent and character of the French claim on land along the French coast has no bearing upon the question under consideration and does not require examination, for the American fishing liberty under the treaty of 1818 does not include the drying and curing of fish on land on any portion of that coast, the coastal waters on the western side of Newfoundland, between Cape Ray and the Quirpon Islands, being the only portion of the French treaty coast with which the American treaty coast under the treaty of 1818 coincides.

It is true that the effect of the fisheries provisions of the treaties between Great Britain and France has been a matter of dispute between those countries, the French claiming an exclusive right of fishing in the waters of the French treaty coast of Newfoundland, but whether or not this contention was justified by the terms of these treaties is a question of no importance now, inasmuch as the French claim of exclusive rights was never established by France or admitted by Great Britain, and was finally disposed of by an adjustment of the whole question under their treaty of April 7, 1904.^b

The French-claim in the negotiations of 1783.

The fact that the French claim, referred to in the British Case, was asserted by France before the treaties of 1783 were entered into between Great Britain and France, and between the United States and Great Britain, and was discussed in the negotiations which resulted in those treaties appears from the published records of those negotiations which are briefly reviewed below.

^a Supra, p. 11.

^b U. S. Case Appendix, p. 83.

Although these two treaties were signed on the same day, September 3, 1783, the negotiations for the treaty with the United States were completed on the 30th of November, 1782, when provisional articles for a treaty were concluded between the United States and Great Britain. The articles of the definitive treaty as finally signed are identical with these provisional articles, which, as recited in the preamble of that treaty, were "to be inserted in and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such treaty accordingly."^a

The definitive treaty of peace between Great Britain and France was also preceded by provisional articles concluded on January 20, 1783, which articles, as in the case of the American treaty, were identical with the provisions of the final treaty in so far as they related to the North Atlantic coast fisheries; but the Declarations accompanying the final treaty were not agreed upon in their final form until after the provisional articles were signed.

The course of these negotiations between Great Britain and France, so far as the question of exclusive French rights under the fisheries provisions of that treaty is concerned, is set forth in the following extract from a memorandum enclosed by Lord Salisbury in his note of July 9, 1889, to M. Waddington, the French Ambassador at London:

The first formal proposal came from M. de Vergennes in a note dated the 6th October, 1782, and runs as follows:

"La concurrence entre les pêcheurs Français et Anglais aiant été une source intarissable de discussions et de querelles, le Roi pense que le moyen le plus sûr de les prévenir est de séparer les pêcheries respectives: en conséquence Sa Majesté consent à se désister du droit de pêche qui lui est acquis en vertu de l'Article XIII du Traité d'Utrecht, depuis le Cap de Bona Vista jusqu'au Cap Saint-Jean, à condition que ses sujets pêcheront seuls à l'exclusion des Anglais, depuis le Cap Saint-Jean en passant par le nord et le Cap Ray, &c."^b

^a U. S. Case Appendix, p. 23.

^b Translation.—The competition between the French and English fishermen having been an inexhaustible source of disputes and quarrels, the King thinks the best means to prevent them is to separate the respective fishing grounds; in consequence His Majesty consents to relinquishing the right of fishery acquired by him under Article XIII of the Treaty of Utrecht, from the Cape of Bona Vista to Cape St. John, on condition that his subjects shall fish alone to the exclusion of the English, from Cape St. John, via the North and Cape Ray, &c.

The English Government, in a note dated the 24th October, declined to concede this exclusive right.

They objected to an Article in the Preliminaries of Peace which, without actually mentioning an exclusive right of fishery, was explained as intended to establish that right, and they only agreed to the insertion of an Article in the following words:

Article V. "Les Pescheurs François jouiront de la pesche qui leur est assignée par l'Article précédent, comme ils ont droit d'en jouir en vertu du Traité d'Utrecht."^a

At the same time, however, Mr. Fitzherbert, the British Plenipotentiary, delivered to the French Government a note in the terms of the eventual Declaration of the 3d September, 1783, promising that His Britannic Majesty would take the most positive measures "pour prévenir que ses sujets ne troublent en aucune manière la pêche des François pendant l'exercice temporaire qui leur est accordé sur les côtes de l'Île de Terre-Neuve."^b

The words "par leur concurrence" were subsequently added to this Declaration, at the instance of M. de Vergennes, in the course of the negotiations for the Definitive Treaty of Peace.

On the 18th June, 1783, the British Ambassador sent home the draft of the French Counter-Declaration, which contained these words: "Quant à la pêche exclusive sur les côtes de Terre-Neuve qui a été l'objet des nouveaux arrangements dont les deux Souverains sont convenus sur cette matière elle est suffisamment exprimée par l'Article du Traité de Paix signé aujourd'hui, et par la Déclaration remise également ce jourd'hui par l'Ambassadeur et Plénipotentiaire de Sa Majesté Britannique, et Sa Majesté déclare qu'elle est pleinement satisfaite à cet égard."^c

The Duke of Manchester was thereupon instructed, if he could not obtain the omission of the word "exclusive" to make another Declaration upon the French Counter-Declaration, protesting that the King of England did not mean to grant *exclusive* fishery any otherwise than by ordering his subjects not to *molest by concurrence*, &c.

The Duke reported that the French Minister had been persuaded to omit the word "exclusive" in the Counter-Declaration, which would render another Declaration from the British Plenipotentiary unnecessary.^d

In these negotiations Great Britain not only denied that French fishermen had previously been entitled to an exclusive right of fishing

^a Translation.—Article V. The French fishermen shall enjoy the fishery that is assigned to them by the foregoing article as they have the right to enjoy it under the Treaty of Utrecht.

^b Translation—to prevent his subjects from molesting in any way the fishery of the French during the temporary exercise which is granted them on the coasts of the island of Newfoundland.

^c Translation.—As to the exclusive fishery on the Newfoundland Coasts which was made the object of the new arrangements on which the two Sovereigns are agreed in this matter it is sufficiently expressed by the Article of the Treaty of Peace signed this day and by the Declaration also handed this day by the Ambassador and Plenipotentiary of His Britannic Majesty and His Majesty declared he is fully satisfied in this respect.

^d U. S. Case Appendix, p. 1094.

in the waters of the French treaty coast of Newfoundland, but, as appears from the above extract, insisted upon the omission of the word "exclusive," which France wished to insert in the declaration accompanying the new treaty, in describing the fishing liberty secured to France by that treaty.

In the negotiations between the United States and Great Britain for the treaty of 1783 the American Commissioners raised the question as to the manner in which the French rights in these fisheries would be dealt with in the treaty between Great Britain and France, and in reply Mr. Fitzherbert, who was the British representative in the French negotiations and at the same time participated with the British Commissioner in the negotiations with the United States, informed the American Commissioners that the French had not expressly demanded the recognition of an exclusive right on the French Coast, and that, to quote from John Adams' report of his reply, "he intended to follow the words of the Treaties of Utrecht and Paris without stirring the point."^a In this connection, however, Mr. Fitzherbert called attention to the agreement between the United States and France in their treaty of 1778, which was then in force, that the United States would never disturb the French fishermen "in the indefinite and exclusive right which belongs to them" on that part of the coast of Newfoundland designated in the Treaty of Utrecht.^b In reply Mr. Adams pointed out that it was expressly provided in the article referred to in the treaty of 1778 that its provisions were "conformable to the true construction of the Treaties of Utrecht and Paris," and took the position that "if the English did not now admit the exclusive construction they could not contend for it against us."^c

The outcome of these negotiations and of the contemporaneous negotiations between Great Britain and France has already been shown, and it will appear from an examination of the terms of the fisheries articles of both treaties of peace of 1783 that in neither of these treaties was an exclusive right on the part of the French in these fisheries mentioned, and that in the United States treaty it was agreed—

That the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that Island).^d

^a U. S. Case Appendix, p. 222.

^b U. S. Case Appendix, p. 92.

^c U. S. Case Appendix, p. 24.

These treaties of 1783, therefore, left the American fishermen on exactly the same footing as British fishermen, so far as the use of the waters of the so-called "French Coast" was concerned.

So far as the United States and France were concerned, the arrangement arrived at between the United States and Great Britain was entirely in harmony with Article X of the treaty of 1778 between the United States and France, which provided that the French fishing rights referred to shall be "conformable to the true construction of the treaties of Utrecht and Paris."^a Whatever bearing, if any, this Franco-American treaty had upon the question of the extent of these French rights, was disposed of by the abrogation of this treaty by the Act of Congress of July 7, 1798.

The subsequent treaty of September 30, 1800, between the United States and France made no reference to any exclusive French fishing rights on the Newfoundland coast or elsewhere, the agreement with respect to the fisheries being merely that each party would not—

intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds or may acquire on the coast of Newfoundland, in the Gulph of St. Lawrence, or elsewhere on the American coast northward of the United States.^a

This treaty expired by its own limitations on July 31, 1809.

It appears, therefore, that, notwithstanding the existence of the French claim in 1783, the use of the waters of Newfoundland for fishing, which American fishermen had enjoyed equally with British fishermen prior to the revolution separating the American Colonies from Great Britain, was continued under the treaty of peace of 1783 between the United States and Great Britain, by the stipulation in Article I that they should have "liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use."

The French-claim in the negotiations of 1818.

In 1818 the treaty stipulations between Great Britain and France and the position of Great Britain with reference to the French fishing rights on the Newfoundland coast were the same as in 1783, and the official records of the negotiations of the treaty of 1818 show that in the discussions leading up to it, which have already been examined in the Case of the United States,^b no reference, either directly

^a U. S. Case Appendix, p. 92.

^b U. S. Case, pp. 51-59.

or indirectly, was made on either side, to the existence of any French claim, and that nothing occurred in those negotiations to warrant the inference drawn in the British Case that the existence of the French claim was regarded by Great Britain as having any bearing whatsoever upon the use by the American fishermen of the bays, creeks, and harbors of the portion of the American treaty coast which coincides with the French treaty coast.

Furthermore, any such inference as is drawn in the British Case as to the influence upon the negotiations of the existence of the French claim is directly contradicted by convincing evidence, which is furnished in the official records of the negotiations, that the Plenipotentiaries on both sides distinctly understood that the word "coast," as used in the negotiations, was intended to include, bays, creeks, and harbors, and that the British Plenipotentiaries understood it as including rivers as well. It will be found that in the counter-draft proposed by the British Plenipotentiaries to the American Plenipotentiaries on October 6, 1818, they offered to agree that the American fishermen should have the liberty *of fishing* "on that part of the western coast of Newfoundland which extends from Cape Ray to the Quirpon Islands, and on that part of the southern and eastern coasts of Labrador which extends from Mount Joli to Huntingdon Island."^a It will be noticed that bays, creeks, and harbors are not expressly mentioned in describing the coast to which the liberty of *taking fish* was to extend, but the article continues in the next paragraph "and it is further agreed that nothing contained in this Article shall be construed to give to the inhabitants of the United States any liberty *to take* fish within the *rivers* of His Britannic Majesty's territories as above described."^a

In commenting on this feature of the British proposal, the American Plenipotentiaries, in their memorandum delivered to the British Plenipotentiaries on the following day, said: "The liberty of taking fish within rivers is not asked. A positive clause to except them is unnecessary, unless it be intended to comprehend under that name waters which might otherwise be considered as bays or creeks,"^b thus distinctly showing their understanding that the coast to which the liberty of fishing extended was intended to include bays and creeks. It appears, therefore, that the understanding both of the

^a U. S. Case, p. 57.

^b U. S. Case, p. 59.

British and American Plenipotentiaries of the meaning of the word "coast," as used in the negotiations, does not support the view expressed in the British Case that "the word 'coast' is used throughout the treaty as something distinct from bays, harbours, and creeks."

Before passing from the consideration of these negotiations, it must also be noted that in advancing the French claim as a reason for attributing to the negotiators the intention of excluding American fishermen from the bays, creeks, and harbors, within the three mile limit, of the American treaty coast, the British Case overlooks the fact that the French claimed an exclusive right of fishing, not merely in the bays, creeks, and harbors, but in all the other waters of the west coast of Newfoundland as well. Inasmuch, therefore, as the west coast of Newfoundland was included in the American treaty coast under the treaty of 1818, it is evident that the existence of this claim was not regarded by the negotiators as a sufficient reason for excluding American fishermen from those waters altogether; and it is difficult to understand how the existence of that claim can now be regarded as a reason for interpreting the treaty so as to exclude American fishermen from any part of those waters. The British Case also fails to make clear how the existence of the French claim can be regarded as a reason for assuming that the negotiators intended to exclude American fishermen from the bays, creeks, and harbors on the portion of the southern coast of Newfoundland and on the shores of the Magdalen Islands, which are included in the American treaty coast, but have never been covered by the French claim, or included in the French treaty coast.

Evidence subsequent to 1818.

Turning now to the period subsequent to the date of the treaty, it is shown in the Case of the United States that the actions of the two Governments during that period fully support the position of the United States on this Question, and the course pursued by the British Case in avoiding all reference to the actions of either Government since the treaty was entered into, which bear upon the subject under consideration, makes it unnecessary for the Counter-Case to review at any length the evidence since 1818 which supports the contention of the United States.

It is appropriate, however, that the attention of the Tribunal should be called to the fact that, soon after the treaty of 1818 went into

operation, the French claim, to which reference is made in the British Case, came up for consideration between the United States and Great Britain, and that the position taken by both Governments at that time fully sustains the contention of the United States as to the right of American fishermen to take fish in the bays, creeks, and harbors on the west coast of Newfoundland, as well as in those on all the rest of the American treaty coasts defined by the treaty of 1818.

Controversy with France in 1823.

The controversy in regard to the French claim in 1823 grew out of an attempt by France to exclude American fishing vessels from the west coast of Newfoundland.

Under the liberty of fishing established on this coast by the treaty of 1818, the American fishermen at once began to engage in fishing in the bays, creeks, and harbors, as well as in all the other waters of the west coast of Newfoundland; and having found that the fishing there was of great importance, as it could "be commenced there several weeks earlier than on any other part of the coast, and the season is so short, at longest, as barely to give time sufficient for making the voyage in the best manner,"^a they returned there annually in considerable numbers. It appears, however, that in the years 1820 and 1821, a French war vessel undertook to interrupt this practice by ordering them away and forbidding them to fish on that coast. In the latter part of May, 1820, the American schooner *Aretas*, and other vessels in company with her, were ordered out of St. George's Bay by the commander of a French naval vessel and forbidden to fish "at any harbor or island" on the west coast of Newfoundland; and in the following year the same vessel was ordered out of the Bay of Port au Port on that coast, and threatened with seizure if attempting again "to catch fish anywhere on that coast." So also, in 1821, the American schooners *Betsy* and *John Quincy Adams* were ordered out of the Bay of Port au Port by an officer of the French warship, and forbidden to fish "there or anywhere on that coast." Again, in the same year, the American fishing schooner *Bird* together with thirty other American fishing vessels, while fishing at the Bay of Islands about the first of June, were boarded by a French naval officer and threatened with seizure if again found

^a U. S. Counter-Case Appendix, p. 105.

"fishing there or any place on the shore of Newfoundland between Cape Ray and the Carpoon [Quirpon] Islands."^a

This situation does not appear to have been called to the attention of the Government of the United States until the spring of 1822, when, in anticipation of further interference by the French naval officers with the American fishing vessels on the west coast of Newfoundland during the approaching season, a number of the American fishermen in March of that year submitted to the Secretary of State depositions, setting forth the occurrences of the two preceding years, as above recited, with a view to having their rights under the treaty of 1818 determined.^a

Mr. Adams, the Secretary of State, promptly wrote to Mr. Gallatin, the American Minister at Paris, on June 28, 1822, enclosing copies of the depositions referred to, from which, he said, "you will perceive that in the years 1820 and 1821 several fishing vessels of the United States were ordered away from their fishing stations on the coast of Newfoundland, within the limits secured to us by the Convention of 20 Octr. 1818, by armed vessels of France, and upon threat of seizure." He accordingly instructed Mr. Gallatin that, "as the commanders of those armed vessels no doubt did not correctly understand their orders from their Government, you are requested to make such a representation to the French Government, as may induce them to rectify those orders for the future."^b

Pursuant to these instructions Mr. Gallatin informed the French Government of the situation, and of the views of the Government of the United States in regard to it, requesting that the orders issued to the French naval officers should be rectified for the future.^b In the correspondence which ensued, the French Government took the position that by the treaty of 1778 with France, the United States pledged itself not to disturb French fishermen in the exercise of their rights on the western coast of Newfoundland, and declared that the enjoyment of the French rights there would be regarded as perpetual and exclusive, and that so long as this pledge continued in force, it should be respected and should be the basis of the instructions given by either Government to their fishermen and to the commanders of their naval vessels.^c

^a U. S. Counter-Case Appendix, pp. 105, 106.

^b U. S. Counter-Case Appendix, p. 107.

^c U. S. Counter-Case Appendix, p. 110.

In reply Mr. Gallatin pointed out, in his note of March 14, 1823,^a to Viscount de Chateaubriand, that the stipulations of the treaty of 1778 did not fully justify the interpretation placed upon them by the French Government, as has already been shown in this Counter-Case in connection with the negotiations leading up to the treaty of 1783 between the United States and Great Britain,^b and that in any event they were no longer in force, as that treaty had been abrogated in 1798. He pointed out further that any engagements under that treaty had been superseded by the subsequent treaty of 1800 between the United States and France, by which it was made clear that the United States was not willing to consider as exclusive the French right to fish on the Newfoundland coast. In discussing the provisions of the treaty of 1800, he said, referring to the 27th Article of it:

Not only the word "exclusive," is not to be found in the part of the article which relates to Newfoundland; but it is evident from the tenor of the whole, that it was not intended by either party to recognize any such exclusive right in that quarter. There is an express distinction made between the coasts of each country, and those of Newfoundland and elsewhere. When speaking of the first, both parties respectively engage not to intermeddle with, not to participate in the fisheries of the other. Instead of this, they only agree not to disturb each other in their rights on the coast of Newfoundland, clearly intimating that to participate was not to disturb; since, had it been otherwise, the expressions "not to intermeddle," "not to participate," would have been preserved and made applicable to the fisheries on that coast as well as to those on the coasts of each country. It would indeed be preposterous to suppose that the United States by agreeing not to disturb France in the exercise of the rights which she might acquire any where on the coast of Newfoundland, in the Gulf of St. Laurence or elsewhere on the American coast northward of the United States, engaged not to participate in such fisheries, and to consider as exclusive the rights which might be acquired by France; since this would have been tantamount to a renunciation on their part of nearly the whole of the fisheries they then enjoyed and to which they had an indisputable right.^c

Mr. Gallatin further pointed out that the stipulations of this treaty also had ceased to be in force, before the treaty of 1818, between the United States and Great Britain, was entered into, the treaty of 1800 having expired by its own limitations in 1809; and he added:

Nothing remains of the obligation formerly contracted by both countries on the subject of the fisheries: and the question recurs, which is stated in part of Your Excellency's letter, whether, independent of any such former stipulations, and by virtue of any treaty antecedent to the right of the United States to take fish on the western

^a U. S. Counter-Case Appendix, p. 111.

^b Supra, pp. 85, 86.

^c U. S. Counter-Case Appendix, p. 113.

coast of Newfoundland, France had there an exclusive right. That it was not viewed as such by either the United States or Great Britain, is sufficiently evident from the article in the convention of 1818, of which I had the honor to enclose a copy to Your Excellency.^a

In concluding this note Mr. Gallatin stated that, after a most attentive perusal of the French treaties, he had been unable to discover on what ground the presumed exclusive right was founded, and he postponed further discussion of the question until "the special treaty stipulations and arguments, by which the claim is intended to be supported, shall have been communicated;" he added, however—

But the United States cannot, in the meanwhile and until the question shall have been settled, order or advise their citizens to abstain from what they must till then consider as their just right, the liberty to participate in common with France and without disturbing them, in the fisheries on the western coast of Newfoundland, which, particularly in their connection with those of the coast of Labrador, are of primary importance to them. It is therefore my duty to renew my remonstrances against the proceedings of His Majesty's armed ships in that quarter, and to call again Your Excellency's most earnest attention to the subject.^a

Viscount de Chateaubriand, replying to Mr. Gallatin, on April 5, 1823, stated that he did not question Mr. Gallatin's general observation regarding the temporary duration of the treaties of 1778 and 1800, and that he confined himself to remarking that the stipulations of the treaty of 1778, which related to the right of fishing belonging to France, were by no means a concession made to France by the United States, but merely a declaration and recognition by the United States of a previous right, and that this right, which was necessarily independent of the treaties between the United States and France, could by no means fall into desuetude with them.^b He stated further that the French Chargé d'Affaires at Washington had been directed to make explanations on the subject to the Government of the United States, and that it was confidently expected that the steps which he was instructed to take would succeed in removing the misunderstandings and inconveniences anticipated by that Government.

Mr. Gallatin responded on April 15, 1823, that he hoped that the French Chargé d'Affaires had been instructed to give some answer to the observations made by Mr. Gallatin on the subject, and to state the grounds on which, independent of the treaty of 1778, the exclusive right claimed by France was founded.^c

^a U. S. Counter-Case Appendix, p. 113. ^b U. S. Counter-Case Appendix, p. 115.

^c U. S. Counter-Case Appendix, p. 116.

The resentment of the United States at the attitude taken by France on the question was indicated by Mr. Gallatin in the concluding paragraph of his note, which was as follows:

That conciliatory means should be found which may be consistent with the exercise of its rights, is the earnest desire of the Government of the United States, as well as of that of France. It has already been explicitly stated that the forcible means to which she has resorted are an aggression on those rights. And she will neither commit her own or injure the interests of her subjects, in abstaining, with every necessary reservation, from similar proceedings, until a satisfactory arrangement shall have taken place.^a

Notwithstanding the statement of the French Government that its Chargé at Washington had been directed to explain to the Government of the United States the French position on the subject of its claim to an exclusive right of fishery, no further explanation was ever made. It appears from an entry in Mr. Adams' diary, under date of July 8, 1823, that the French Chargé had informed him on that day that he was still without final instructions on the subject; and Mr. Adams told him that the question was really one between France and Great Britain, with which the United States had but a secondary concern, because, if Great Britain had conceded to the United States a right which already had been granted as an exclusive possession to France, Great Britain must indemnify the United States for it.^b

The contention of the United States confirmed by Great Britain.

Meanwhile the promised explanations not having been received from France, Mr. Adams wrote on June 27, 1823, to Mr. Rush, the American Minister at London, informing him of that fact, and of the necessity of bringing the situation to the attention of the British Government, explaining that, although the questions involved interested and concerned Great Britain not less than the United States, the reason why the President had determined in the first instance to address the complaint of the United States to the French Government alone was in order to give that Government an opportunity of disowning the objectionable acts of its naval officers, and of disclaiming any pretences to an exclusive fishing right at the places where those

^a U. S. Counter-Case Appendix, p. 117.

^b U. S. Counter-Case Appendix, p. 626.

acts had occurred, without implicating Great Britain in the transaction; and that—

This course of proceeding was thought to be most consistent with delicacy towards both those Governments, by avoiding towards France the appearance of recurring upon a question between her and us to the interposition of a third power, and by abstaining towards Great Britain from calling for her interference with France in a difference which might be adjusted without needing the aid of her influence.^a

The complaint to France, however, had—

hitherto proved ineffectual, excepting to demonstrate that the pretensions of France to an exclusive right of fishing at the place referred to are without solid foundation, and that her intention of resorting to force to maintain this inadmissible pretension, though not yet unequivocally asserted, has been so far ascertained as to remove all scruple of delicacy with regard to the propriety of stating the case to the British Government, and calling upon them to maintain at once the faith of their treaty with us.^a

Mr. Rush was therefore instructed to present the case to the British Government on the basis indicated in the final paragraph of Mr. Adams' letter, which is, in part, as follows:

It is probable that there may be no such interruption to our fishermen during the present season; and the occasion appears to be highly favorable for an adjustment of it to our satisfaction. Perhaps a mutual explanation and understanding between the British and French Governments concerning it, at this time, may render any resort to other measures unnecessary. But if, on discussion of the subject between them, France should not explicitly desist from both the pretensions to the exclusive fishery and to the exercise of force within British waters to secure it, you will claim that which the British Government cannot fail to perceive is due, the unmolested execution of the treaty stipulation contained in the convention of October 20, 1818; and if the British Government admits the claim of France to *exclusive* fishery on the western coast of Newfoundland from Cape Bay to the Quirpon Islands, they will necessarily see the obligation of indemnifying the United States by an equivalent for the loss of that portion of the fishery, expressly conceded to them by the convention, which, in the supposed hypothesis, must have been granted by Great Britain under an erroneous impression that it was yet in her power to grant.^b

Negotiations having been undertaken not long afterwards, between the United States and Great Britain, for a convention for the suppression of the slave trade and for the adjustment of matters of difference between the two Governments, Mr. Rush proposed the subject of the conflict of interests, which had arisen between France and

^a U. S. Counter-Case Appendix, p. 118.

^b U. S. Counter-Case Appendix, p. 120.

the United States on the American treaty coast of Newfoundland, as one of the subjects for discussion; and it appears from the protocol of the 10th Conference, which was held on March 29, 1824, that "he stated at length the circumstances constituting the case which his Government thought it advisable to bring under the view of the British Government," and presented a written memorandum on the subject.^a

In this written memorandum Mr. Rush, after reviewing the circumstances of the case and the grounds upon which the United States objected to the action of France, set forth the attitude of the United States toward Great Britain on the question as follows:

Furthermore, the United States cannot suppose that Great Britain, by the convention of October, 1818, above recited, would ever have agreed that the inhabitants of the United States should have (for a just equivalent contained in the convention) the right or the liberty to take fish on the very coast in question in common with British subjects but under the conviction that British subjects had the liberty of resorting there; and if they had, the claim of France to drive away the fishing vessels of the United States cannot stand.

The above summary may serve to present the general nature of the question which has arisen between the United States and France respecting fishing rights, and which Great Britain will doubtless desire to see settled in a manner satisfactory to the United States. It is obvious that, if Great Britain cannot make good the title which the United States hold under her to *take* fish on the western coast of Newfoundland, it will rest with her to indemnify them for the loss.^b

At the 14th Conference, held on April 13, 1824, the British Commissioners, who were Messrs. Huskisson and Stratford Canning, informed Mr. Rush that "they conceive that the case, as previously described by him, was hardly of a nature to be entertained among the subjects of the present negotiation," their objection being that it had been varied in some degree from a direct question between the United States and Great Britain by the issues between the United States and France, which were independent of the treaty of 1818 between the United States and Great Britain.^c

They stated, however, that—

The citizens of the United States were clearly entitled, under the convention of October, 1818, to a participation with his Majesty's subjects in certain fishing liberties on the coasts of Newfoundland; the Government of the United States might, therefore, require a declaration of the extent of those liberties as enjoyed by British sub-

^a U. S. Counter-Case Appendix, p. 123. ^b U. S. Counter-Case Appendix, p. 125.

^c U. S. Counter-Case Appendix, p. 126.

jects under any limitations prescribed by treaty with other powers, and protection in the exercise of the liberties so limited, in common with British subjects, within the jurisdiction of his Majesty as sovereign of the island of Newfoundland; that such declaration and protection, if necessary, might be applied for in the regular diplomatic course.^a

It thus appears that at that time Great Britain distinctly admitted that the American fishing liberty in common with British subjects on the treaty coasts under the treaty of 1818 applied to the same waters to which the fishing liberty enjoyed by British subjects extended on that coast. In reporting this conference to Mr. Adams, Mr. Rush stated that, in response to an inquiry by him, "the British Plenipotentiaries peremptorily asserted a right in Great Britain to participate in the fishery on the coast, and denied in this same tone that the French right was exclusive."^a Inasmuch, therefore, as in the circumstances of the case the question of fishing in the bays, creeks, and harbors on the west coast of Newfoundland was directly involved, and as Great Britain then, as always, asserted that the British fishermen were entitled to fish in those waters in common with the French fishermen, it follows that, under the foregoing declaration of the British Commissioners, the American fishing liberty, under the treaty of 1818, was regarded as extending to the bays, creeks, and harbors of that coast in common with the British and French fishermen. So also, on the portion of the American treaty coast on the southern part of Newfoundland and on the Magdalen Islands, to which the French treaty coast did not extend and where British fishermen were entitled to fish in all the bays, creeks, and harbors without any question of French treaty rights, it follows, as a matter of course, from the foregoing declaration of the British Commissioners, that the American fishing liberty under the treaty of 1818, was regarded as extending to all the bays, creeks, and harbors of that portion of their treaty coast in common with British subjects.

Upon the refusal of the British Commissioners to include the question of the French interference with American fishermen among the subjects embraced in the pending negotiations, Mr. Rush, adopting their suggestion that, if necessary, application might be made to the British Government through the regular diplomatic channels for such action as the United States desired, wrote to Mr. George Can-

^a U. S. Counter-Case Appendix, p. 123.

ning, the Secretary of State for Foreign Affairs, on May 3, 1824, in regard to the whole subject, stating that—

The United States seek only the fair and unmolested enjoyment of the fishing rights which they hold at the hands of Great Britain under the convention of 1818, satisfied that Great Britain, whether as regards the guarantee of those rights, or the maintenance of her own sovereign jurisdiction over this island and its immediate waters, will take such steps as the occasion calls for, and above all, as are appropriate to the just and amicable intentions which it may be so confidently supposed will animate the Government of his most Christian Majesty, as well as that of his Britannic Majesty, towards the United States, touching the full rights of the latter under the convention aforesaid.^a

Mr. George Canning promptly submitted Mr. Rush's note and accompanying documents to Mr. Stratford Canning, who, as above stated, was one of the British Commissioners in the conferences then being carried on with Mr. Rush, with a request that they be examined with attention, and for an expression of his views. Mr. Stratford Canning wrote, in reply to Mr. George Canning, on May 6, 1824, stating that "whatever right to take fish is enjoyed by British subjects on the western coast of Newfoundland, the same is to be equally enjoyed by the citizens of the United States, in so far as depends on the consent and authority of the British Government."^b This language, it will be observed, is even more explicit than that used in the protocol of the 14th Conference between Messrs. Canning and Huskisson and Mr. Rush, which is quoted above, and it shows beyond question that the bays, creeks, and harbors on the west coast of Newfoundland were understood to be included in the American treaty coast under the treaty of 1818.

In this letter, after expressing his views on the questions presented by Mr. Rush's note, Mr. Canning added:

But there is another case to be provided for. The claim of France to take fish on the western coast of Newfoundland may turn out to be exclusive with respect to Great Britain as well as to the United States. As to how far it may be just and necessary for Great Britain to admit, or possible for France to make good such a pretension, in virtue of treaties, I must take the liberty of referring you to the report, No. 7,^c addressed to you on the 15th ultimo by Mr. Huskisson and myself. Whatever information we were able to collect on this branch of the subject is substantially contained in that statement.

In the event of the supposed claim being either at once admitted, or fairly substantiated in such manner as to exclude the British no

^a U. S. Counter-Case Appendix, p. 129.

^b British Case Appendix, p. 112.

^c Great Britain has not furnished the United States with a copy of this report.

less than the American fishermen from the limits assigned to France, it is not improbable that His Majesty's Ministers may feel themselves bound in equity to allow the Americans an equivalent in some other quarter, unless they can prevail on France to waive her extreme right and to consent to their participating henceforward in the west-coast fisheries of Newfoundland. It is not to be imagined that the British plenipotentiaries in framing the convention of 1818, could have meant to concede, in return for concessions made by America, a privilege already made over *in toto* to another Power, even to the exclusive exclusion of British subjects; though it is not impossible that the clause relating to the western coast of Newfoundland may have been inserted with a knowledge of the French claim, and intended only to have an eventual and contingent effect.^a

If the British Government at that time had held the view, now contended for in the British Case, that the bays, creeks, and harbors of the west coast of Newfoundland were not included in the American treaty coast under the treaty of 1818, it is inconceivable that such interpretation should not have been stated by them in the course of the discussion above reviewed, or in response to Mr. Rush's note, for obviously the exclusion of American fishermen from the bays, creeks, and harbors on that coast would have furnished a convenient basis for adjusting a question which clearly occasioned considerable embarrassment to the British Government. It is a noteworthy fact, therefore, that nowhere throughout the discussion can any suggestion be found on either side that the treaty was intended to be so interpreted, or, indeed, that it was even susceptible of any such interpretation. The British Government made no answer to Mr. Rush's note, but as no further attempt was made by the French Government to interfere with American fishing vessels on the western coast of Newfoundland, the incident closed without the necessity of further action either by the United States or Great Britain.

Referring to the suggestion in the extract above quoted from Mr. Stratford Canning's letter to Mr. George Canning, that "it is not impossible that the clause relating to the western coast of Newfoundland may have been inserted with a knowledge of the French claim and intended only to have an eventual and contingent effect," attention is called to the fact that, by the treaty of 1904 between Great Britain and France,^b it was agreed that the only fishing rights which France retained on the Newfoundland coasts should be exercised on a footing of equality with British subjects. It is evident, therefore, that, even if the clause referred to was intended to have a contingent

^a British Case Appendix, p. 112.

^b U. S. Case Appendix, p. 83.

and eventual effect, such as Mr. Canning had in mind, it would now operate, not to exclude American fishermen, but to leave them in undisputed enjoyment of their fishing liberty in common with British and French subjects in all the waters of the western coast of Newfoundland.^a

The British admission in 1857.

The right of American fishermen under the treaty of 1818 to fish in the bays and harbors of the west coast of Newfoundland was again recognized by the British Government in discussing with the Newfoundland Government in 1857 the effect of the treaty negotiated by Great Britain in that year with France.

By Article I of that treaty it was agreed that French subjects—shall also have the right to fish, and to use the strand for fishery purposes, during the said season, to the exclusion of British subjects, on the north coast of Newfoundland, from the Quirpon Islands to Cape Norman; and on the west coast, in and upon the five fishing-harbours of Port-au-Choix, Small Harbour, (or Petit Port), Port au Port, Red Island, and Cod Roy Island.^b

It will be observed that the fishing right to be enjoyed by French subjects under this treaty in the harbors on the west coast of Newfoundland is described as a right “to the exclusion of British subjects”, rather than as an exclusive right, and the reason for using this particular form of expression was explained by Mr. Labouchere, then Secretary of State for the Colonies, in his letter of January 16, 1857, to the Governor of Newfoundland, transmitting a copy of the treaty for legislative action, as follows:

Along the little tract of shore between Quirpon Islands and Cape Norman shore, and also at the five reserved points, the French rights of fishery are described as “to the exclusion” of “British subjects.” This phrase requires explanation. It need scarcely be said Her Majesty’s Government could entertain no idea of ceding to any Foreign Nation special rights to the exclusion of her own subjects in particular, even on points of such minute geographical importance as these. No such consequences follow here. But the phraseology was rendered unavoidable by the peculiar position in which this country was placed by former negotiations. In 1818 the British Government concluded the convention of October 20th of that year with the United States, in which it is, among other things stipulated, that the inhabitants of the United States, shall have liberty to take fish “in common with the subjects of His Britannic Majesty” on the western and northern coast of Newfoundland, from Cape Ray to the Quirpon Islands.—Now on the assumption that the French right on that coast

^a U. S. Counter-Case Appendix, p. 277.

^b U. S. Case Appendix, p. 59.

is exclusive (which, as has been said, must be practically the case) the Americans could acquire no right, under this convention of 1818, during the period of the year occupied by the French fishery, and it is believed that in point of fact no claim to interfere with the French has ever been sustained by Americans; nevertheless Her Majesty's Government are of opinion, in order to preserve consistency with the language of the convention of 1818, it was necessary to declare the French right on points between Cape Ray and the Quirpons to be exclusive "against British subjects," in order to leave no semblance of interference with nominal (although not in fact exerciseable) rights on the part of the United States. It is very unnecessary to do more than refer you to the more recent fishing treaty with the United States of 1854, as it does not appear to affect the question now before us.^a

So far as this treaty and Mr. Labouchere's explanation of the purpose of the language employed relate to the use of the harbors on the west coast of Newfoundland for fishing purposes, they furnish a distinct admission that the American treaty coast under the treaty of 1818 included the bays and harbors on that coast. In this connection attention is called particularly to Mr. Labouchere's statement at the end of the extract quoted, that the treaty of 1854 with the United States "does not appear to affect the question now before us." This statement, it will be perceived, necessarily implies that the bays and harbors referred to were included in the American treaty coast under the treaty of 1818, for otherwise, under the provisions of the treaty of 1854 admitting American fishermen to all the bays and harbors of Newfoundland not included in the treaty coast defined by the treaty of 1818, the treaty of 1854 would have directly affected the question then before Mr. Labouchere.

As has been shown by the evidence already presented, Mr. Labouchere's assumption, that the American fishing rights in the harbors on the west coast of Newfoundland were "not in fact exerciseable," was not founded on fact, and his statement to that effect must be attributed to the necessity he was under of making some explanation to excuse the discrimination against Newfoundland fishermen under this treaty with France, by which the French were given fishing rights in certain harbors to the exclusion of the British fishermen, leaving the American fishermen undisturbed. It is unnecessary, however, to consider Mr. Labouchere's views on this point, for, as hereinbefore stated, that treaty was never put into operation, and subsequently the treaty of 1904 between Great Britain and France

^a U. S. Counter-Case Appendix, p. 253.

finally disposed of the French claim of an exclusive right of fishing in those waters.

The British admission in 1877.

Again, in 1877 in the proceedings before the Halifax Commission to determine the value of the fishing liberty secured to American fishermen by the fisheries provisions of the treaty of 1871, which, in so far as they related to Newfoundland, were identical with those of the treaty of 1854, it was distinctly recognized and admitted in the British Case in those proceedings that the bays, creeks, and harbors of the west coast of Newfoundland were included in the American treaty coast defined by the treaty of 1818.

By the provisions of the treaty of 1871, American fishermen were admitted to all the bays and harbors of Newfoundland not included in the treaty coast defined by the treaty of 1818, and it was to Newfoundland's interest in those proceedings to magnify rather than minimize the extent of the waters opened to American fishermen by the new treaty. If, therefore, there had been any reasonable ground for asserting that the bays and harbors on the west coast of Newfoundland were not part of the treaty coast defined by the treaty of 1818, the claim would certainly have been made by Newfoundland at that time that they formed part of the waters to which American fishermen were admitted by the treaty of 1871.

It will be found, however, that in the British Case in the Halifax proceedings such claim was not made, the extent of the American fishing liberty secured under the treaty of 1871 being set forth as follows:

In addition to the privileges so enjoyed under the Convention of 1818, Articles XVIII and XXI of the Treaty of Washington granted to United States citizens:

(1) The liberty to take fish of every kind, except shellfish, on the remaining portion of the coast of Newfoundland, with liberty to land on the said coast for the purpose of drying their nets and curing their fish;

* * * * *

A reference to the accompanying map will show that the coast, the entire freedom of which for fishing purposes has thus been acquired by the United States for a period of twelve years, embraces that portion extending from the Rameau Islands on the southwest coast of the island eastward and northwardly to the Quirpon Islands.*

* U. S. Counter-Case Appendix, p. 547.

It will be perceived that the bays and harbors of the west coast of Newfoundland were not included in this description of the waters of Newfoundland not covered by the treaty coast of the treaty of 1818.

Sir Robert Bond's novel interpretation discredited in Newfoundland.

As pointed out in the Case of the United States, the novel interpretation of the treaty now contended for by Newfoundland on this point was first suggested by Sir Robert Bond, the Premier of Newfoundland, in his speech of April 7, 1905. He said in that speech—

I believe I am correct in saying that it is the first time that this position has been taken, and, if I am correct, in my interpretation of the treaty of 1818, the whole winter herring fishery of the West Coast has been carried on for years by the Americans simply at the sufferance of the Government of this Colony.*

This statement as to the novelty of Sir Robert Bond's proposed interpretation was confirmed by Mr. Morine, the leader of the opposition in the Newfoundland House of Assembly, who spoke in reply to Sir Robert Bond on the same day; but, instead of finding any merit in this interpretation, he said that the very fact that such an interpretation had not been taken since 1818 was in itself an answer to Sir Robert Bond's contention, and "that however desirous the House might be to accept that interpretation, because it would very much narrow American rights and increase our own in our waters, he did not think that any lawyer would for a moment believe the Premier's point was well taken." Mr. Morine's speech, as published in the St. Johns Evening Telegram of April 11, 1905, is printed in full in the Appendix to this Counter-Case, and the following extract from it will show that the objections which have been urged by the United States against the Bond interpretation were fully shared by the leader of the opposition party in Newfoundland, which, since this question was raised, has defeated Sir Robert Bond's party:

Now, the Premier had stated that he had arrived at an interpretation of the treaty of 1818, which he, the Premier, had never before seen advanced, but which he was satisfied was a correct one, and for which he had stated some reasons. He, Mr. Morine, would say that however desirous the house might be to accept that interpretation, because it would very much narrow American rights and increase our own in our waters, he did not think that any lawyer would for a moment believe the Premier's point was well taken. The very fact that it had not been taken since 1818 was at once an argument and

* U. S. Case, p. 245.

an answer. If there had been anything in that interpretation it would not have been left to the discovery of a layman in the year 1905, almost 100 years after the making of the treaty. And furthermore, the fact that this interpretation had not been acted on for upwards of one hundred years would be a sufficient answer. In fact, if there had been, originally any meaning in such a petty interpretation of the words, the advantage had long been lost by the custom in usage of the two countries. The fact that such an interpretation had never been made before, but left until that date to be discovered by a layman, however eminent, would agree with the contention that there was nothing in it. The statesmen of the United States, Canada or Great Britain had never placed such an interpretation upon it. The interpretation of the Premier as to rights of the Americans was based on the fact that in one place the treaty referred to the rights on the Newfoundland coast between Ramea and Quirpon; and later on, when speaking of Labrador, it said not only coast, but further added the words bays, harbors and creeks, words which had not been put in with reference to Newfoundland. The Premier would argue, from the fact that the word coast if followed by the words bays, harbors and creeks, when referring to Labrador, the right to fish on the coast of Newfoundland, did not imply the right to use the bays, harbors and creeks of the said coast. Now, he Mr. M., would like some seafaring man to show him the difference between the coast and bays; where the coast ended, and the bays commenced. What was the coast from Cape Race to Burin? Was it not Placentia Bay? And was not the Bay of Islands part of the West Coast? Further on the Premier would find, when reference was made to the right to cure or dry fish in certain bays, harbors and creeks and coasts, that it was especially recognized that the bays, harbors and creeks were part and parcel of the coast, and the right to fish upon the coast therefore included the right to fish in all the bays, harbors and creeks thereof, inasmuch as the coast was made up of bays, harbors and creeks. To argue that the Americans were to be deprived, under the treaty of 1818, of the right of fishing in any of the bays, harbors and creeks of the coast, because only the coast itself was mentioned, was to argue falsely. The larger word included the smaller—the word coast included bays, harbors and creeks, and though, when referring to the Labrador coast, the words bays, harbors and creeks were used in addition, they might just as well have been left out—they were merely a lawyer-like repetition, having the same meaning. He was surprised that the Premier, after having made such a deep study of the case, and after having read that very excellent summary, quoting facts and dates, did not see the futility of his argument.^a

By way of explanation of why Great Britain consented to present to this Tribunal a contention which was discredited even in Newfoundland, it must be noted that Sir Robert Bond, in the negotiations with Great Britain, with reference to the *modus vivendi* of 1907, made his consent to certain proposals conditional "on the

^a U. S. Counter-Case Appendix, p. 425.

receipt of an assurance from His Majesty's Government that the terms of reference to The Hague Tribunal shall include the question of the right of American vessels to fish or trade in any of the bays, harbors, or creeks of that portion of the Newfoundland coast between Cape Ray and Quirpon Islands, together with all other questions which may be raised under the treaty."^a In the same connection it must also be noted that the Special Agreement, under which this Question is submitted to arbitration, was entered into before the general election in Newfoundland in the spring of 1909, in which the people of Newfoundland retired Sir Robert Bond and his party from office.^a

^a U. S. Case Appendix, p. 1013.

QUESTION SEVEN.

Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally?

Although the British contention under Question 2 was that the inhabitants of the United States, and not the vessels used by them, were entitled to a fishing liberty under the treaty, yet it is now contended on the part of Great Britain, in discussing Question 7, that the vessels alone, and not the inhabitants of the United States, owning or using such vessels, must be considered.

This point of view and an apparent misunderstanding on the part of Great Britain as to the position of the United States on this Question make it necessary that the exact scope and meaning of this Question should be determined.

The scope of the Question.

This Question, like all the other Questions presented in the Special Agreement under which this Arbitration is held, is raised only in relation to the provisions of Article I of the treaty of 1818, which this Tribunal is called upon to interpret. It is agreed on both sides that Article I of that treaty relates to fishing, and not to commercial privileges; and the United States does not claim that the treaty of 1818 confers general commercial privileges on the treaty coasts upon the inhabitants of the United States, or upon their vessels, whether they are trading or fishing vessels.

The Question under consideration assumes that commercial privileges on the treaty coasts are now accorded, by agreement or otherwise, to United States trading vessels generally; but it does not ask what these privileges are, or by what agreement or otherwise they are accorded; and in considering this Question it is unnecessary to examine the terms on which such commercial privileges are accorded to American trading vessels, or the extent of such privileges.

The Question deals only with the effect of the provisions of Article I of that treaty upon the use by the inhabitants of the United States

of the same vessel for trading and for fishing purposes, in relation to the enjoyment of any commercial privileges which are now accorded to trading vessels generally.

As understood on the part of the United States, therefore, the Question which the Tribunal is called upon to determine is whether or not Article I of this treaty should be interpreted as meaning that the use by the inhabitants of the United States of their vessels for fishing under the treaty prevents them from having for those vessels the commercial privileges accorded by agreement or otherwise to trading vessels generally, when the vessels so used are duly authorized by the United States in that behalf.

The British Case seems to concur in this view as to the scope and meaning of this Question, except that it discusses the exercise of commercial privileges by American fishing vessels, instead of by the inhabitants of the United States, the British contention being "that the exercise of commercial privileges by American fishing vessels would be contrary to the intention of that treaty."^a

The United States, on the other hand, contends that the exercise of commercial privileges, whether by American fishing vessels or by the inhabitants of the United States using such vessels for trading purposes, when duly authorized by the United States in that behalf, would not be contrary to the intention of the treaty.

The position of the United States.

With this view of the scope and meaning of this Question, it is unnecessary for the United States to show what commercial privileges have been accorded by agreement or otherwise to trading or fishing vessels of the United States; and, as the evidence presented in the British Case relates wholly to that subject, and the greater part of such evidence applies to it in relation to the non-treaty coasts in distinction from the treaty coasts, which alone are referred to in this Question, it is unnecessary to examine such evidence.

It is expressly recognized in the British Case that "in terms the Question stated for the opinion of the Tribunal relates only to the treaty coast";^a and, if the discussion of this Question is to be confined within its proper limits, it is desirable that its application to the treaty coasts, in distinction from the non-treaty coasts, should be borne in mind.

^a British Case, p. 127.

With reference to the non-treaty coasts, it has been contended by Great Britain that American fishing vessels, as such, were not entitled to claim the commercial privileges which had been extended since the treaty of 1818 to American vessels generally, because, under the renunciatory clause of the treaty, which applied only to the non-treaty coasts, it had been agreed that American fishermen were to be admitted to the bays and harbors of that coast for four specified purposes and "for no other purpose whatever." The United States, on the other hand, as pointed out in the Case of the United States, has always contended that—

the only renunciation contained in the renunciatory clause relates not to commerce but to fishing on the coasts referred to, which renunciation is made with the express proviso that fishermen shall nevertheless be permitted to enter the bays and harbors on such coast for four specified purposes. There is nothing in the renunciation, therefore, which applies to commercial privileges extended generally to American vessels after the date of the treaty; and as fishing vessels were not expressly exempted from the commercial privileges subsequently extended to American vessels, the provisions of the treaty would seem to have no bearing on either side of the question.^a

That question, however, as has already been shown, is not submitted to this Tribunal for decision, and it is unnecessary to discuss it here, for, as stated in the Case of the United States, "it has no bearing whatsoever on the question of commercial privileges on the treaty coasts."^a

With reference to the treaty coasts, as is pointed out in the Case of the United States, "the renunciatory clause, which was the basis for denying commercial privileges to American fishermen on the coasts covered by it, does not apply to the treaty coasts, and, therefore, on those coasts the American fishermen are not limited by the treaty to the use of the bays and harbors for the four purposes of shelter, repairs, wood, and water, and the 'no other purpose whatever' provision has no application to them there."^b

In this connection attention is called to the extract quoted in the Case of the United States from a report made in June, 1886, by the Canadian Minister of Marine and Fisheries,^b in which he discusses the question of commercial privileges on the non-treaty coasts, and draws a distinction between the exercise of such privileges on those coasts and on the treaty coasts as follows:

Mr. Bayard states that in the proceedings prior to the treaty of 1818 the British commissioners proposed that United States fishing

^a U. S. Case, p. 190.

^b U. S. Case, p. 194.

vessels should be excluded "from carrying also merchandise," but that this proposition "being resisted by the American negotiators, was abandoned," and goes on to say, "this fact would seem clearly to indicate that the business of fishing did not then, and does not now, disqualify vessels from also trading in the regular ports of entry." A reference to the proceedings alluded to will show that the proposition mentioned related only to United States vessels visiting those portions of the coast of Labrador and Newfoundland on which the United States fishermen had been granted the right to fish, and to land for drying and curing fish, and the rejection of the proposal can, at the utmost, be supposed only to indicate that the liberty to carry merchandise might exist without objection in relation to those coasts, and is no ground for supposing that the right extends to the regular ports of entry, against the express words of the treaty.

The express words of the treaty, which are referred to in the above extract, it will be remembered, are the words of the renunciation clause which have no application to the treaty coasts.

The negotiations preceding the treaty of 1818, to which reference is made in the foregoing extract, are reviewed at length in the Case of the United States; and it is there shown that, in view of the position taken by the two Governments in those negotiations, it cannot be claimed on the part of Great Britain that the enjoyment of commercial privileges by the inhabitants of the United States exercising their treaty liberty of fishing would be contrary to the intention of that treaty.

It is, therefore, contended on the part of the United States that Article I of the treaty of 1818 cannot be interpreted as meaning that the inhabitants of the United States are not entitled to use the same vessel for fishing and for trading purposes, if they are duly authorized by the United States in that behalf, in the exercise of their fishing liberty under the treaty of 1818, and in the enjoyment of any commercial privileges which are now accorded, by agreement or otherwise, to United States trading vessels generally on the treaty coasts.

CHANDLER P. ANDERSON,
*Agent of the United States in the
North Atlantic Coast Fisheries Arbitration.*

NORTH ATLANTIC COAST FISHERIES

APPENDIX
TO THE
COUNTER CASE OF THE
UNITED STATES

BEFORE
THE PERMANENT COURT OF ARBITRATION
AT THE HAGUE
UNDER THE
PROVISIONS OF THE SPECIAL AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND GREAT BRITAIN
CONCLUDED JANUARY 27, 1909



CONTENTS OF THE APPENDIX.

[The footnotes in this Appendix, except those inclosed in brackets, appear in the original publications.]

SECTION I.—TREATIES AND AGREEMENTS—

Between the United States and Great Britain—

	Page.
Special agreement of January 27, 1909—	
Mr. Knox to Mr. Bryce, June 2, 1909 (inclosure).....	5
Mr. Bryce to Mr. Knox, June 4, 1909.....	6
Mr. Bryce to Mr. Knox, June 4, 1909.....	6
Mr. Anderson to Mr. Aylesworth, July 13, 1909.....	7
• Mr. Aylesworth to Mr. Anderson, August 4, 1909.....	8
Mr. Aylesworth to Mr. Anderson, August 6, 1909.....	10
Mr. Anderson to Mr. Aylesworth, October 22, 1909.....	10
Mr. Aylesworth to Mr. Anderson, October 26, 1909.....	11
Mr. Knox to Mr. Bryce, January 14, 1910.....	11
Mr. Bryce to Mr. Knox, January 14, 1910.....	12
Treaty of September 3, 1783.....	13
Unratified treaty of December 31, 1806.....	18
Treaty of July 3, 1815.....	27

Between Great Britain and France—

Treaty of September 3, 1783.....	31
Treaty of August 2, 1839.....	40
Regulations adopted pursuant to treaty of August 2, 1839.....	42
Treaty of November 11, 1867.....	47
North Sea fisheries convention, 1882.....	53

SECTION II.—LEGISLATIVE ACTS, PROCLAMATIONS, AND EXECUTIVE ORDERS—

United States—

Statutes.....	59
Act of August 5, 1854.....	59
Act of March 1, 1873.....	60
Proclamations.....	62
Proclamation of July 1, 1873, relating to the treaty of May 8, 1871.	62
Proclamation of May 29, 1874, relating to the treaty of May 8, 1871.	64

Great Britain—

Statutes.....	67
Act of March 30, 1809.....	67
Act of June 24, 1822.....	68
Act of June 22, 1825.....	71
Act of July 13, 1868.....	72

Maritime provinces—

Statutes.....	75
Nova Scotia act of December 13, 1854.....	75
New Brunswick act of November 3, 1854.....	76
Prince Edward Island act of October 7, 1854.....	77

SECTION II.—LEGISLATIVE ACTS, PROCLAMATIONS, AND EXECUTIVE ORDERS— Continued.

Dominion of Canada—	Page.
Statutes.....	79
Act of September 23, 1854.....	79
Colony of Newfoundland—	
Statutes.....	81
Act of April 23, 1845.....	81
Act of July 7, 1855.....	82
Act of May 14, 1860.....	83
Act of March 27, 1862.....	84
Act of May 1, 1868.....	86
Act of May 5, 1873.....	86
Act of March 28, 1874.....	87
Act of May 10, 1906.....	88
Proclamations.....	89
Proclamation authorizing the governor of Newfoundland to call a general assembly.....	89

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS:

Prior to the Treaty of 1818—

Pertaining to the unratified treaty of 1806.....	95
Messrs. Monroe and Pinkney to Mr. Madison, November 11, 1806..	95
Mr. Monroe and Mr. Pinkney to Mr. Madison, January 3, 1807...	96
Mr. Madison to Messrs. Monroe and Pinkney, February 3, 1807..	97
Mr. Madison to Messrs. Monroe and Pinkney, May 20, 1807.....	99
Mr. Monroe to Mr. Madison, Secretary of State, February 28, 1808.	101

Subsequent to the Treaty of 1818—

The Franco-American controversy, 1822-1824—

Mr. Reed to Mr. Adams, March 15, 1822 (inclosure).....	105
Mr. Adams to Mr. Gallatin, June 28, 1822.....	107
Mr. Adams to Mr. Reed, July 3, 1822.....	107
Mr. Gallatin to Viscount de Chateaubriand, January 22, 1823....	107
Viscount de Chateaubriand to Mr. Gallatin, February 28, 1823...	108
Translation.....	109
Mr. Gallatin to Viscount de Chateaubriand, March 14, 1823.....	111
Mr. Gallatin to Viscount de Chateaubriand, April 2, 1823.....	114
Viscount de Chateaubriand to Mr. Gallatin, April 5, 1823.....	115
Translation.....	115
Mr. Gallatin to Viscount de Chateaubriand, April 15, 1823.....	116
Mr. Gallatin to Mr. Adams, April 17, 1823.....	117
Mr. Adams to Mr. Rush, June 27, 1823.....	118
Mr. Rush to Mr. Adams, August 12, 1824 (inclosures).....	120

Commercial agreement of 1830—

Mr. Van Buren to Mr. McLane (extracts), July 20, 1829.....	131
Mr. McLane to the Earl of Aberdeen, December 12, 1829.....	144
Mr. McLane to the Earl of Aberdeen, March 16, 1830.....	146
Mr. McLane to the Earl of Aberdeen, July 12, 1830.....	148
The Earl of Aberdeen to Mr. McLane, August 17, 1830.....	149
Mr. Van Buren to Mr. McLane, October 5, 1830.....	154
Mr. McLane to the Earl of Aberdeen, November 3, 1830.....	155
The Earl of Aberdeen to Mr. McLane, November 5, 1830.....	156

Pertaining to the situation in 1852-1853—

Memorial of the citizens of Gloucester, Mass., respecting the fish- eries (July, 1852).....	159
Mr. Fillmore to Mr. Webster, July 20, 1852.....	160

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS—Continued.

Subsequent to the Treaty of 1818—Continued.

Pertaining to the situation in 1852-1853—Continued.

Page.

Extracts from the Life of Daniel Webster, by G. T. Curtis, published 1870..... 162

Mr. Webster to President Fillmore, August 4, 1852..... 166

President Fillmore's message on fisheries and commercial reciprocity with Canada, February 7, 1853..... 167

Mr. Dobbin to Commodore Shubrick, July 14, 1853..... 169

Mr. Dobbin to Commodore Shubrick, July 23, 1853..... 174

Commodore Shubrick to Commodore Whittle, July 23, 1853..... 175

Commodore Shubrick to the Secretary of the Navy, August 5, 1853. 176

Commodore Shubrick to the Secretary of the Navy, August 7, 1853 (inclosure)..... 176

Commodore Shubrick to Mr. Dobbin, August 16, 1853..... 178

Consul Palmer to Commodore Shubrick, August 29, 1853 (inclosure)..... 179

Lieutenant-Commander Watson to Commodore Shubrick, September 2, 1853..... 182

Commodore Shubrick to the Secretary of the Navy, September 19, 1853..... 183

Pertaining to the situation in 1870—

Mr. Fish to Mr. Boutwell, April 23, 1870 (inclosures)..... 187

Relating to the treaty of 1871—

Sir Edward Thornton to Mr. Fish, June 19, 1873..... 195

Sir Edward Thornton to Mr. Fish, June 20, 1873..... 196

Mr. Fish to Sir Edward Thornton, June 25, 1873..... 196

Sir Edward Thornton to Mr. Davis, July 30, 1873 (inclosures)..... 197

Relating to payment of the Halifax award—

Mr. Evarts to Mr. Welsh, November 4, 1878..... 201

Mr. Evarts to Mr. Welsh, November 8, 1878 (inclosure)..... 201

Mr. Evarts to Mr. Welsh, November 9, 1878..... 202

Mr. Evarts to Mr. Welsh, November 12, 1878..... 202

Mr. Evarts to Mr. Welsh, November 16, 1878..... 203

Mr. Evarts to Mr. Welsh, November 21, 1878..... 203

Mr. Welsh to Mr. Evarts, November 22, 1878..... 203

Period of 1905 to 1909—

Mr. Adee to Mr. Durand, July 25, 1905..... 205

Mr. Adee to Mr. Reid, September 5, 1908..... 205

Mr. Adee to Mr. Howard, September 5, 1908..... 206

Mr. Bryce to Mr. Bacon, September 29, 1908..... 206

Miscellaneous correspondence, documents, etc..... 207

Extracts from minutes of colonial legislative assemblies—

Miscellaneous British, colonial, and other correspondence, documents, reports, etc..... 207

The Earl of Dalhousie to Earl Bathurst, June 8, 1827 (extract). 207

Extracts from the journal of the legislative assembly of Newfoundland, 1850..... 207

Extracts from the journal of the legislative assembly of Nova Scotia, 1852..... 209

Extracts from the journal of the legislative assembly of Nova Scotia, 1853..... 214

Colonel Bazalgette to Admiral Seymour, July 2, 1852 (inclosure)..... 214

Colonel Bazalgette to Sir John Pakington, July 8, 1852.. 216

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS—Continued.

Miscellaneous correspondence, documents, etc.—Continued.

Extracts from minutes of colonial legislative assemblies—Continued.

Miscellaneous British, colonial, and other correspondence, documents, reports, etc.—Continued.

	Page.
Extracts from the journal of the legislative assembly of Prince Edward Island, 1853.....	216
Lieutenant-Governor Bannerman to Lord Grey, November 15, 1851.....	216
Lieutenant-Governor Bannerman to Lord Grey, February 12, 1852.....	217
Extracts from the journal of the legislative assembly of Newfoundland, 1857	218
Message from the governor of Newfoundland to the house of assembly, January 16, 1857, and inclosures.....	218
Sir A. Perrier to the Earl of Malmesbury, July 5, 1852...	224
Sir A. Perrier to the Earl of Malmesbury, July 26, 1852 (inclosure).....	225
Mr. Crowdy to Sir John Pakington, September 22, 1852..	229
Sir A. Perrier to the Earl of Clarendon, June 10, 1853 (inclosures).....	231
Mr. Ker B. Hamilton to the Duke of Newcastle, September 28, 1853.....	242
Governor Darling to Sir W. Molesworth, September 29, 1855 (inclosure).....	250
Mr. Labouchere to Governor Darling, January 16, 1857..	252
Extracts from the journals of the legislative assembly of Newfoundland, 1859	257
Lord Cowley to Count Walewski, December 13, 1858....	257
Count Walewski to Lord Cowley, January 5, 1859.....	258
Extracts from the journal of the legislative assembly of Nova Scotia, 1861.....	259
The Duke of Newcastle to Sir A. Bannerman, March 4, 1861.....	260
Message of his excellency the governor to the house of assembly.....	261
Extracts from Canadian Sessional Papers, Vol. IV, 1869.....	263
Mr. Campbell to the Canadian minister of marine and fisheries, February 2, 1869.....	263
Extracts from Canadian Sessional Papers, No. 81, 1870	268
Mr. Romaine to the under secretary of state, colonial office, June 4, 1869 (inclosure).....	268
Extracts from Canadian Sessional Papers, No. 12, 1871	270
Report of Canadian minister of marine and fisheries, June 7, 1870.....	270
Sir John Young to Lord Granville, July 9, 1870.....	271
Sir John Young to Vice-Admiral Wellesley, July 11, 1870.	272
Extracts from debates and proceedings of the legislative assembly of Nova Scotia, 1871.....	272
Extracts from the journal of the legislative assembly of Newfoundland, 1876.....	276
Extracts from the debates of the senate of the Dominion of Canada, session 1888, on the fisheries treaty.....	278

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS—Continued.

Miscellaneous correspondence, documents, etc.—Continued.

Extracts from minutes of colonial legislative assemblies—Continued.

Miscellaneous British, colonial, and other correspondence, documents, reports, etc.—Continued.

	Page.
Extracts from the debates of the house of commons of the Dominion of Canada, sessions 1888.	293
Extracts from the debates of the house of commons of the Dominion of Canada, 1889.	296
Extracts from British Blue Book, France No. 1 (1890).....	297
The Earl of Derby to Governor Sir J. H. Glover, June 12, 1884.	297
Governor Sir J. Glover to the Earl of Derby, July 16, 1884 (inclosure).	309
Governor Sir G. Des Voeux to Earl Granville, April 27, 1886.	311
Colonial office to foreign office, July 6, 1886.	315
Count d' Aubigny to the Earl of Iddesleigh, September 20, 1886.	316
Captain Le Clerc to Captain Hamond, September 22, 1886.	317
The Earl of Iddesleigh to M. Waddington, October 28, 1886.	318
Mr. Stanhope to Governor Sir G. Des Voeux, October 30, 1886 (extracts).	318
Colonial office to foreign office, December 22, 1886 (inclosures).	318
Colonial office to foreign office, February 12, 1887 (inclosure).	320
Governor Sir G. Des Voeux to Sir H. Holland, February 21, 1887.	321
Sir H. Holland to Administrator Sir F. Carter, May 23, 1887.	321
The Marquis of Salisbury to M. Waddington, July 5, 1887.	322
The Marquis of Salisbury to M. Waddington, August 24, 1887.	323
M. Waddington to the Marquis of Salisbury, March 5, 1888.	324
The Marquis of Salisbury to M. Waddington, November 23, 1888.	324
Lord Knutsford to Governor Sir T. O'Brien, May 31, 1889.	325
The Attorney-General, St. Johns, to Governor Sir T. O'Brien, November 23, 1889.	326
Extracts from British Blue Book, Newfoundland, May, 1891..	328
Statement made by Sir W. Whiteway in the House of Lords on 23d April, 1891.	328
Extracts from the British Blue Book, Newfoundland, August, 1893.	330
Colonial office to Sir W. Whiteway, August 3, 1891 (inclosure).	330
Newfoundland customs circular of March 18, 1898.	331

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS—Continued.

Miscellaneous correspondence, documents, etc.—Continued.

Extracts from minutes of colonial legislative assemblies—Continued.

Miscellaneous British, colonial, and other correspondence, documents, reports, etc.—Continued.

	Page.
Correspondence between the government of Newfoundland and the Imperial Government, in reference to the settling of the French shore question, 1904.	332
Colonial secretary to governor of Newfoundland (received January 14, 1904).	332
Governor Boyle to colonial secretary (sent January 18, 1904).	333
Colonial secretary to governor of Newfoundland (received January 22, 1904).	333
Governor Boyle to colonial secretary (sent January 24, 1904).	334
Colonial secretary to governor of Newfoundland (received 25 January, 1904).	334
Governor Boyle to colonial secretary (sent January 24, 1904).	334
Colonial secretary to governor of Newfoundland (received March 30, 1904).	335
Governor Boyle to colonial secretary.	336
Governor Boyle to colonial secretary (sent April 9, 1904).	336
Colonial secretary to governor of Newfoundland (received April 9, 1904).	336
Governor Boyle to Sir Robert Bond, April 12, 1904 (inclosure).	337
Governor Boyle to colonial secretary (sent April 15, 1904).	338
Governor Boyle to Sir Robert Bond, April 20, 1904.	339
Colonial secretary to Governor Boyle (received April 19, 1904).	339
Colonial secretary to Governor Boyle, April 12, 1904.	340
Extracts from British Blue Book, Newfoundland, October, 1907.	341
Extracts from The Western Star (Bay of Islands) of October 3 and 10, 1906.	341
Governor MacGregor to Lord Elgin, October 24, 1906 (inclosure).	345
Governor MacGregor to Lord Elgin, October 26, 1906.	347
Governor MacGregor to Lord Elgin, November 1, 1906 (inclosure).	349
Lord Elgin to Governor MacGregor, November 9, 1906.	352
Governor MacGregor to Lord Elgin, November 16, 1906.	353
Governor MacGregor to Lord Elgin, November 16, 1906.	353
Governor MacGregor to Lord Elgin, November 20, 1906 (inclosure).	353
Governor MacGregor to Lord Elgin, November 21, 1906 (inclosure).	357
Governor MacGregor to Lord Elgin, November 22, 1906.	360
Admiralty to colonial office, November 22, 1906 (inclosure).	361
Governor MacGregor to Lord Elgin, November 22, 1906 (inclosure).	363

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS—Continued.

Miscellaneous correspondence, documents, etc.—Continued.

Extracts from minutes of colonial legislative assemblies—Continued.

Miscellaneous British, colonial, and other correspondence, documents, reports, etc.—Continued.

Extracts from British Blue Book, Newfoundland, October, 1907—Continued.

	Page.
Governor MacGregor to Lord Elgin, December 10, 1906, (inclosure).....	365
Governor MacGregor to Lord Elgin, December 29, 1906..	366
Lord Elgin to Governor MacGregor, December 29, 1906..	366
Admiralty to colonial office, January 1, 1907 (inclosures).	367
Admiralty to colonial office, January 28, 1907 (inclosure).	374
Extract from the Daily News, St. Johns, Newfoundland, February 15, 1907.....	376
Governor MacGregor to Lord Elgin, February 25, 1907 (inclosure)	377
Governor MacGregor to Lord Elgin, February 26, 1907 (inclosure).....	380
Governor MacGregor to Lord Elgin, March 4, 1907 (inclosure).....	381
Governor MacGregor to Lord Elgin, April 2, 1907 (inclosure).....	384
Governor MacGregor to Lord Elgin, April 4, 1907 (inclosure).....	386
Governor MacGregor to Lord Elgin, April 17, 1907 (inclosure).....	389
Governor MacGregor to Lord Elgin, April 23, 1907 (inclosure).....	390
Governor MacGregor to Lord Elgin, April 24, 1907 (inclosure).....	390
Governor MacGregor to Lord Elgin, May 7, 1907 (inclosures).....	391
Governor MacGregor to Lord Elgin, May 8, 1907.....	397
Governor MacGregor to Lord Elgin, August 2, 1907.....	397
Extracts from the annual report of the Canadian department of marine and fisheries, 1908-9.....	398
Extract from the Birmingham (England) Daily Post, March 9, 1907.....	401
Extract from London Morning Post, September 11, 1907....	403
Extract from the St. Johns, Newfoundland, Daily News of September 25, 1907.....	407
Editorial in the Plaindealer, published St. Johns, Newfoundland, January 27, 1909.....	408
Speeches of Sir Robert Bond, premier of Newfoundland, and replies of Hon. A. B. Morine, opposition leader, and M. P. Cashin.....	411
The premier's speech on second reading of foreign fishing vessels bill, April 7, 1905.....	411
Reply of Mr. Morine to Premier Bond's speech of April 7, 1905.	425
The premier's speech on moving the House into committee of the whole on the bill entitled "An act respecting foreign fishing vessels," April 12, 1905.....	437

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS—Continued.

Miscellaneous correspondence, documents, etc.—Continued.

Extracts from minutes of colonial legislative assemblies—Continued.

Miscellaneous, British, colonial, and other correspondence, documents, reports, etc.—Continued.

Speeches of Sir Robert Bond, etc.—Continued.

	Page.
Reply of Mr. Morine to Sir Robert Bond's speech of April 12, 1905.....	448
Speech of the Right Hon. Sir Robert Bond, in relation to the modus vivendi, February 12, 1907.....	464
Speech of M. P. Cashin, M. H. A., on the modus vivendi, delivered in the house of assembly, February 14, 1907..	504
Speech of Sir Robert Bond on the Newfoundland fishery before the colonial conference of 1907, May 14, 1907...	510
Extracts from the proceedings of the Halifax Commission—	
Case of Her Majesty's Government before the Fishery Commission, under the treaty of Washington, of May 8, 1871.....	525
Extracts from testimony.....	555
Extracts from the report dated April 24, 1793, of a committee of the House of Commons of Great Britain appointed to enquire into the state of the trade of Newfoundland.....	560
Extracts from "The British Dominions in North America," by Joseph Bouchette, published London, 1831.....	564
Extracts from "British America," by M'Gregor, published 1832.....	566
Extracts from "Reports on Sea and River Fisheries of New Brunswick," by M. H. Perley, second edition, 1852.....	580
Extracts from an article on fisheries published in the Encyclopedia Britannica, ninth edition, 1879.....	585
Extracts from lecture delivered by Prof. T. H. Huxley at the National Fishery Exhibition, Norwich, England, April 21, 1881.....	596
Extract from inaugural address of Professor Huxley, F. R. S., at the International Fisheries Exhibition, London, 1883...	599
Extract from "The Fishery Laws" by Frederick Pollock, issued by the International Fisheries Exhibition, London, 1883.....	600
Extract from "The Fisheries of Canada," by L. Z. Joncas, read at the International Fisheries Exhibition, London, 1883...	601
Extracts from "Newfoundland and Canadian Lights and Fog Signals on the Coasts of Newfoundland and Labrador"....	608
Miscellaneous correspondence, documents, etc., of the United States—	
Extracts from President Madison's message of June 1, 1812.....	616
Extract from the Works of John Adams, by C. F. Adams, published 1856, April 5, 1815.....	617
Extract from "Writings of Albert Gallatin," by Henry Adams, published 1879.....	619
Extracts from "Memoirs of John Quincy Adams," by C. F. Adams, published 1875, March, 1818.....	621
Mr. Buchanan to Mr. Crampton, August 19, 1848.....	624
Extract from speech of Hon. Amos Tuck in the House of Representatives of the United States, August 27, 1852.....	624
Mr. Marcy to Señor Escalante, October 29, 1855.....	625

SECTION III.—CORRESPONDENCE, DOCUMENTS, AND PAPERS—Continued

Miscellaneous correspondence, documents, etc.—Continued.

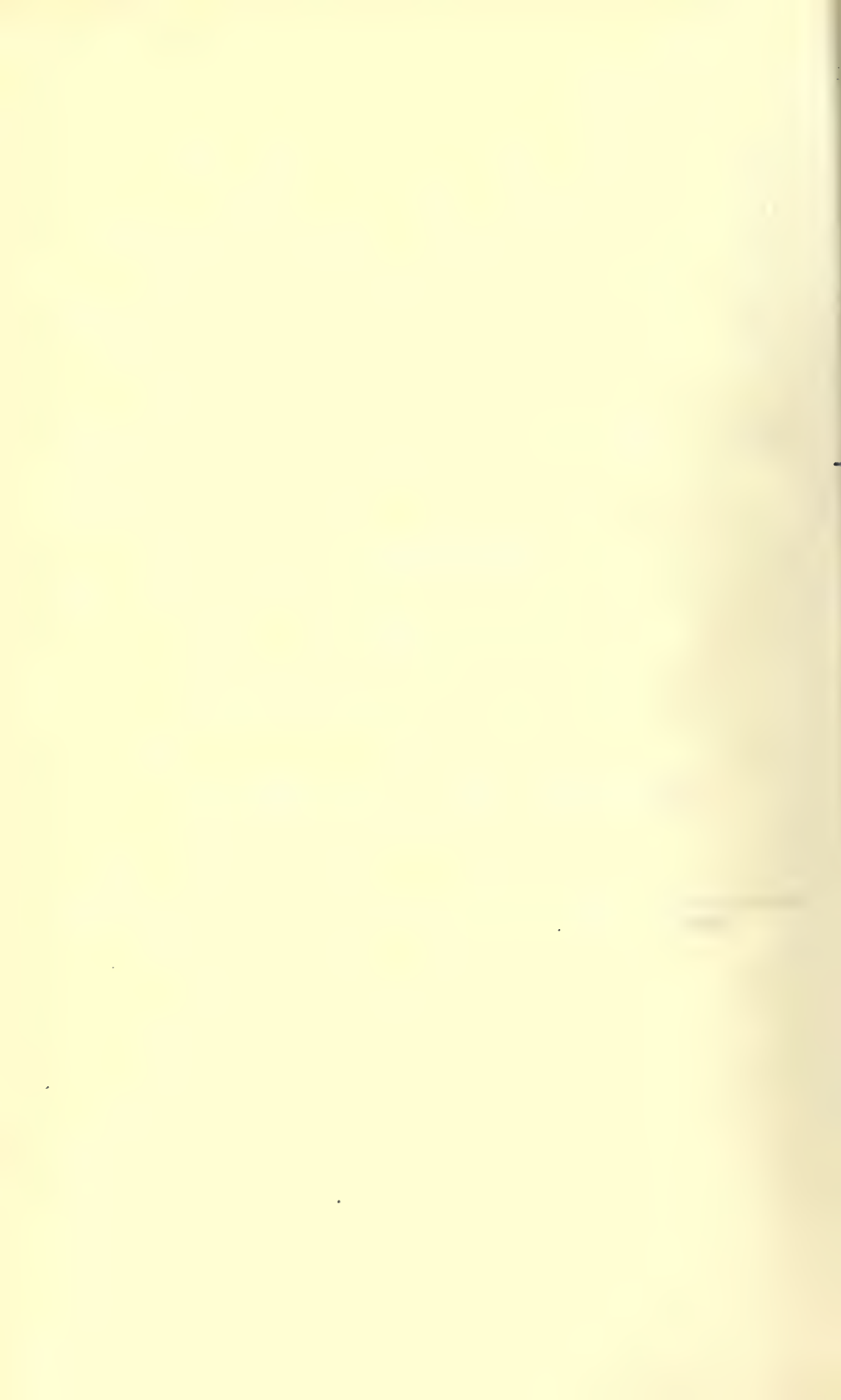
Miscellaneous, correspondence, documents, etc., of the United States—Continued.

	Page.
Lord Russell to Hon. J. M. Mason, confederate commissioner at London, July 10, 1863.....	627
Opinion of court of enquiry convened April 7, 1864, at Boston, for the purpose of enquiring into an alleged violation of British territorial jurisdiction by the U. S. S. <i>Rhode Island</i> , under command of Commander S. D. Trenchard, May 30, 1863, in chasing and firing at the steamer <i>Margaret and Jessie</i> in English waters .	627
Mr. Burnley to Mr. Seward, September 10, 1864.....	628
Mr. Seward to Mr. Burnley, September 15, 1864.....	629
Mr. Seward to Mr. Burnley, September 16, 1864.....	630
Deputy colonial secretary of Newfoundland to Messrs. John Pew & Sons, February 28, 1905, (inclosures).....	631
The British ambassador to the Secretary of State, October 22, 1905.	633
The Secretary of State to the British ambassador, October 23, 1905.....	633
Mr. Dickinson to Mr. Knox, November 29, 1909 (inclosure).....	634
Doctor Doughty, Dominion archivist, to Consul-General Foster, January 5, 1910 (inclosure).....	635
Consul Benedict to the Secretary of State, January 6, 1910.....	637
Consul Benedict to the Secretary of State, January 7, 1910.....	638
The origin and mission of the Hydrographic Office (extract).....	639
Mr. Alexander to the Secretary of State, February 1, 1910.....	640
Geographical data—	
Extracts from Blunt's American Coast Pilot.....	643
Detailed description of portions of the southern, western, and northern coasts of Newfoundland, etc.....	647
Charts published by the United States Hydrographic Office, Bureau of Equipment, Department of the Navy.....	689



SECTION I
OF THE APPENDIX
OF THE
COUNTER CASE OF THE UNITED STATES

TREATIES AND AGREEMENTS



SPECIAL AGREEMENT OF JANUARY 27, 1909.

Mr. Know to Mr. Bryce.

DEPARTMENT OF STATE,
June 2, 1909.

Excellency:

By Article II of the Special Agreement of January 27 last, between Great Britain and the United States for the submission to arbitration of questions relating to the North Atlantic Coast Fisheries, it is provided:

"Either party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this agreement, and which is claimed to be inconsistent with the true interpretation of the treaty of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion."

At the request of Mr. Chandler P. Anderson, the Agent of the United States in this proceeding, I have the honor to present to you the accompanying list, proposed by him, of the legislative and executive acts of Canada and Newfoundland, which are specified on the part of the United States in compliance with the requirement of the above Article that the legislative and executive acts referred to therein must be specified within three months of the exchange of notes enforcing the Special Agreement, which period will not expire until the 4th of this month, the notes referred to having been exchanged on March 4th last.

I have the honor to be, with the highest consideration, your excellency's most obedient servant,

P. C. KNOX.

His Excellency The Right Honorable JAMES BRYCE, O. M.
Ambassador of Great Britain.

[Inclosure.]

List of legislative and executive acts of Canada and Newfoundland specified on the part of the United States under the provisions of Article II of the special agreement of January 27, 1909, between the United States and Great Britain.

Revised Statutes of Canada, 1906:

Chapter 45.—The Fisheries Act;

Chapter 47.—The Customs and Fisheries Protection Act;

Chapter 48.—The Customs Act;

Chapter 113.—The Canada Shipping Act, Part VI, so far as relates to the compulsory employment of Pilots and payment of dues, and Part XII relating to Public Harbours and Harbour Masters, and Rules and Regulations established thereunder.

Canadian Order in Council of September 12, 1907, promulgating Fishery Regulations (including Regulations).

Canadian Order in Council of September 9, 1908, amending Fishery Regulations.

Consolidated Statutes of Newfoundland, 1892:

Chapter 119.—Of Pilots and Pilotage for the Port of St. John's;

Chapter 120.—Of Harbour Master and Harbour Regulations for the Port of St. John's;

Chapter 124.—Of the Coast Fisheries;

Chapter 129.—Of the Exportation, Sale, etc., of Bait Fishes.

Newfoundland Act of March 3, 1896 (61 Vict. cap. 3).—An Act respecting the Department of Fisheries.

Newfoundland Act of March 30, 1898 (61 Vict. cap. 13).—An Act respecting the Customs.

Newfoundland Act of July 19, 1898 (62 Vict. cap. 19).—An Act relating to Light Dues.

Newfoundland Act of June 15, 1905 (5 Edw. VII, cap. 4).—An Act respecting Foreign Fishing Vessels.

Newfoundland Fishing Regulations, 1908.

Mr Bryce to Mr. Knox.

No. 138.]

BRITISH EMBASSY,
Washington, June 4th, 1909.

SIR: I have the honour to acknowledge the receipt of your note dated June the second, enclosing a list of legislative and executive acts of Canada and Newfoundland specified on the part of the United States in compliance with the requirements of Article II of the Special Agreement of January 27th last for the submission to arbitration of questions relating to the North Atlantic Fisheries.

I have the honour to be with the highest consideration sir, your most obedient humble servant,

JAMES BRYCE.

The Honourable PHILANDER KNOX,
Secretary of State.

Mr. Bryce to Mr. Knox.

No. 137.]

BRITISH EMBASSY,
Washington, June 4th 1909.

SIR: By Article II of the special Agreement of January 27th last, between Great Britain and the United States for the submission to arbitration of questions relating to the North Atlantic Coast Fisheries, it is provided:

"Either Party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this agreement, and which is claimed to be inconsistent with the true interpretation of the treaty

of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion."

On the part of His Majesty's Government I have the honour to inform you that His Majesty's Government proposes to call the attention of The Hague Tribunal in pursuance of the provisions of the said Article II, to certain acts of the United States, being such as would fall within the provisions of that Article, and which are claimed to be inconsistent with the true interpretation of the Treaty of 1818 and to call upon the Tribunal to express in its award its opinion upon such acts and to point out in what respect, if any, they are inconsistent with the principles laid down in the award in reply to the questions submitted for decision to the Tribunal.

The acts in question are the actions of the United States Government directed towards, or amounting to an attempt at, the policing by the national vessels of the United States of the so-called Treaty Coast that is to say those parts of the Coast of Newfoundland and Labrador and the Magdalen Islands on which the inhabitants of the United States have under the said Treaty a liberty to take fish in common with the subjects of His Britannic Majesty.

This notice is given in compliance with the requirements of the above Article that notice of the acts intended to be called into question must be "specified within three months of the exchange of notes enforcing this agreement," which period will expire upon this day, the notes referred to having been exchanged on the fourth of March last.

I have the honour to be, with the highest consideration, sir, your most obedient, humble servant,

(Signed) JAMES BRYCE.

The Honourable PHILANDER KNOX, *Secretary of State.*

Mr. Anderson to Mr. Aylesworth.

NEW YORK, *July 13, 1909.*

Hon. A. B. AYLESWORTH,

The Agent of Great Britain in the North

Atlantic Coast Fisheries Arbitration,

17 Victoria Street, London, S. W., England.

SIR: Official notice of your appointment as Agent of Great Britain in the North Atlantic Coast Fisheries Arbitration having been received by the Secretary of State and communicated to me as Agent of the United States in this proceeding, it is appropriate that I should send to you directly, instead of through the Secretary of State to the British Ambassador, a formal communication which I have to make on the part of the United States in reply to the note of June 4th last from the British Ambassador to the Secretary of State, setting forth the provisions of Article II of the Special Agreement of January 27th last between Great Britain and the United States, and stating that

"His Majesty's Government proposes to call the attention of the Hague Tribunal in pursuance of the provisions of the said Article II, to certain acts of the United States, being such as would fall within the provisions of that Article, and which are claimed to be inconsistent with the true interpretation of the Treaty of 1818 and to call upon the Tribunal to express in its award its opinion upon such acts and to point out in what respect, if any, they are inconsistent with the principles laid down in the award in reply to the question submitted for decision to the Tribunal," and stating further that "The acts in question are the actions of the United States Government directed towards, or amounting to an attempt at, the policing by the national vessels of the United States of the so-called Treaty Coast that is to say those parts of the Coast of Newfoundland and Labrador and the Magdalen Islands on which the inhabitants of the United States have under the said Treaty a liberty to take fish in common with the subjects of His Britannic Majesty."

I have the honor to call attention to the very general terms of the specification of the actions of the United States Government referred to in the above communication, and although no provision is made in the Special Agreement for the procedure to be taken in case the specification of the acts referred to in Article II of that Agreement is regarded as inadequate or otherwise objected to by either party, nevertheless the Agent and Counsel on the part of the United States in this case are of opinion that you should be promptly notified that owing to the generality of the terms of the specification, they are unable to identify the particular acts which are to be called into question. It may prove to be unnecessary to urge this objection for generality before the Tribunal if meanwhile data sufficient to cure the objection is furnished by Great Britain in time to enable the Agent and Counsel on the part of the United States to investigate the acts referred to, with a view to a proper discussion of the questions presented, but otherwise formal objection to the presentation of the acts referred to will be made before the Tribunal on the ground that the specification does not meet the requirements of the provisions of Article II of the Special Agreement.

I have the honor to be, sir, your obedient servant,

CHANDLER P. ANDERSON,
*Agent of the United States in the
North Atlantic Coast Fisheries Arbitration.*

Mr. Aylesworth to Mr. Anderson.

15 VICTORIA STREET,
London, S. W., 4th August, 1909.
CHANDLER P. ANDERSON, Esq.,
*Agent for the United States,
in the North Atlantic Coast Fisheries Arbitration,
35 Wall Street, New York.*

SIR: I have the honour to acknowledge receipt of your communication of the 13th July, stating that the Agent and Counsel of the

United States in connection with the pending Arbitration in respect of the North Atlantic Coast Fisheries, are unable to identify the particular Acts on the part of the Government of the United States to which the Government of Great Britain proposes to call the attention of the Tribunal as directed towards, or amounting to, an attempt at the policing by the national vessels of the United States, of the so-called Treaty Coast, and which are claimed by His Majesty's Government to be inconsistent with the true interpretation of the Treaty of 1818, and I note your suggestion that data sufficient to remove this difficulty should be furnished in time to enable investigation to be made into the Acts referred to.

I do not find in the Convention for submission to the Tribunal of the questions agreed upon, any provision which would seem to contemplate the delivery of a statement in detail, setting out the specific facts which may be relied on as evidence of the conduct in respect of which it is intended to make complaint, but I am anxious that the Agent and Counsel of the United States should not be embarrassed in their work of preparation by any uncertainty in regard to a matter considered to be of such importance, and I may therefore say, by way of reply to your communication, that, in 1905, the United States sailing vessel "Grampus," under Captain Hanson, was in the Bay of Islands, Newfoundland, from early in October till the end of the fishing season. During the whole of this time Mr. A. B. Alexander, of the United States Fisheries Department was on board the "Grampus," and actively engaged in advising and directing many operations on the part of United States vessel Masters and fishermen, which operations were, in the submission of His Majesty's Government, contrary to the true intent and meaning of the Treaty of 1818.

In 1906 the United States Revenue cutter "Potomac," under Captain Hines, was in the Bay of Islands from October till nearly the end of the season, with Mr. Alexander again on board, and in charge, and the "Potomac" on several occasions towed from Woods Island to Birchy Cove different United States fishing vessels which had on board Newfoundland citizens employed as fishermen on such fishing vessels in contravention of the Newfoundland Statutes in that behalf.

In each of the years 1907 and 1908 the United States Revenue cruiser S. S. "Gresham," under Captain Perry, was in the Bay of Islands for some weeks during October and November with Mr. Alexander again on board, and directing the ship's movements till she left, when Mr. Alexander went ashore at Birchy Cove, and remained there till the end of the fishing season.

It is the action of the United States Government in sending into Newfoundland Territorial Waters its national ships upon the occasions and in the circumstances above indicated, to which His Majesty's Government proposes to call the attention of the Tribunal, and in regard to which the Tribunal will be asked to express its opinion.

I have the honour to be, sir, your obedient servant,

A. B. AYLESWORTH,
*Agent for Great Britain in the
North Atlantic coast Fisheries Arbitration.*

Mr. Aylesworth to Mr. Anderson.

15, VICTORIA STREET,
London, S. W., 6th August, 1909.

CHANDLER P. ANDERSON, Esq.,

*Agent of the United States in the North Atlantic Coast
Fisheries Arbitration, 35, Wall Street, New York.*

SIR: Under date 2nd June last the Secretary of State at Washington, notified His Majesty's Ambassador there, under the provisions of Article II of the special Agreement between Great Britain and the United States for the submission to arbitration of questions relating to the North Atlantic Coast Fisheries, that certain specified Statutes of Canada and Newfoundland were considered by the United States inconsistent with the true interpretation of the Treaty of 1818, but no indication was given of the special clauses or provisions of the said Statutes which it will be claimed are obnoxious to the said Treaty.

I have the honour to point out that the different provisions of the Statutes enumerated, are so numerous and various, that the Solicitors and Counsel for His Majesty's Government in connection with the arbitration are quite unable to identify those which are to be called to the attention of the Tribunal, and in these circumstances I beg to request that, at as early a date as may be practicable, I may be furnished with a statement indicating with as much precision as is possible, the specific clauses or sections of each of the Statutes mentioned in regard to which it is the intention of the Government of the United States to ask the Tribunal to express, in its award, an opinion.

I have the honour to be, sir, your obedient servant,

A. B. AYLESWORTH,
*Agent for Great Britain in the North
Atlantic Coast Fisheries Arbitration.*

Mr. Anderson to Mr. Aylesworth.

WASHINGTON, D. C., October 22, 1909.

HONORABLE A. B. AYLESWORTH,

*Agent for Great Britain in the
North Atlantic Coast Fisheries Arbitration,
Ottawa, Canada.*

SIR: Replying to your letter of August 6th last in which you request, with reference to the list of Acts specified on the part of the United States under Article II of the Special Agreement of January 27, 1907, that at as early a date as may be practicable you may be furnished with a statement indicating with as much precision as possible the objectionable clauses or sections of each of the Acts specified, I have the honor to inform you that if it becomes necessary to bring up for discussion the Acts specified on the part of the United States, it is not anticipated that there will be occasion to go beyond the particular sections or clauses thereof, which are printed in the

Appendix to the Case of the United States delivered on October 4 last, pursuant to the provisions of Article VI of the Special Agreement referred to.

I have the honor to be, sir, your obedient servant,

CHANDLER P. ANDERSON,
*Agent of the United States in the North
Atlantic Coast Fisheries Arbitration.*

Mr. Aylesworth to Mr. Anderson.

NORTH ATLANTIC COAST FISHERIES ARBITRATION

AT THE HAGUE,
Ottawa, Oct. 26th, 1909.

DEAR SIR: I have the honour to acknowledge receipt of your letter of the 22nd inst., informing me that if it becomes necessary to bring up for discussion, on the part of the United States, before the Tribunal of Arbitration at The Hague, the Acts specified under Article II of the special agreement of 27th January, 1909, it is not anticipated that there will be occasion to go beyond the particular sections or clauses thereof which are printed in the Appendix to the Case of the United States delivered on 4th October inst.

I have the honour to be, Sir, Your obedient Servant,

(Signed)

A. B. AYLESWORTH.

CHANDLER P. ANDERSON, Esq.,

Agent of the United States in the

North Atlantic Coast Fisheries Arbitration,

Department of State, Washington, D. C.

Mr. Knox to Mr. Bryce.

DEPARTMENT OF STATE,
Washington, D. C., January 14, 1910.

EXCELLENCY: Confirming the understanding already reached between us for the mutual accommodation of both Governments and in accordance with the clause of Article VIII of the Special Agreement of January 27th, 1909, between the United States and Great Britain for the North Atlantic Coast Fisheries Arbitration, which provides that the time fixed by that Agreement for the delivery of the counter-cases and printed arguments and for the meeting of the Tribunal may be extended by mutual consent of the Parties, I have the honor to inform you that it is agreed on the part of the United States that the time within which the counter-cases may be served, be extended to include February 21st, 1910, and that the printed arguments be delivered on May 16th, 1910, the argument of Great Britain being delivered at the Department of State, at Washington, or at the office of the Agent in New York if requested, and the argument of the United States at the Foreign Office at London on that date, duplicate

copies thereof to be delivered as soon thereafter as possible to each of the members of the Tribunal, both arguments being delivered simultaneously in each case, and that June 1st, 1910, be fixed as the date upon which the first meeting of the Tribunal shall be held at The Hague, for the opening of the oral arguments.

Your Excellency's note of this date confirming the understanding referred to is regarded by this Government as sufficient to complete the arrangement agreed upon.

I have the honor to be, with the highest consideration, your Excellency's most obedient servant,

P. C. KNOX.

His Excellency, The Right Honorable JAMES BRYCE, O. M.,
Ambassador of Great Britain.

Mr. Bryce to Mr. Knox.

No. 14.]

BRITISH EMBASSY,
Washington, January 14, 1910.

SIR: I have the honour to acknowledge the receipt of your Note of to-day's date confirming the understanding already reached between us for the mutual accommodation of both Governments and in accordance with the clause of Article VIII of the Special Agreement of January 27th, 1909, between the United States and Great Britain for the North Atlantic Coast Fisheries Arbitration, which provides that the time fixed by that Agreement for the delivery of the counter cases and printed arguments and for the meeting of the Tribunal may be extended by mutual consent of the Parties. In this note you inform me that it is agreed on the part of the United States that the time within which the counter cases may be served, be extended to include February 21st, 1910, and that the printed arguments be delivered on May 16th, 1910, the argument of Great Britain being delivered at the Department of State, at Washington, or at the office of the Agent in New York if requested, and the argument of the United States at the Foreign Office at London on that date, duplicate copies thereof to be delivered as soon thereafter as possible to each of the members of the Tribunal, both arguments being delivered simultaneously in each case, and that June 1st, 1910, be fixed as the date upon which the first meeting of the Tribunal shall be held at The Hague, for the opening of the oral arguments.

Your note above referred to will be regarded by His Majesty's Government as sufficient to complete the arrangement agreed upon.

I have the honour to be, with the highest consideration, sir, your most obedient, humble Servant,

JAMES BRYCE.

The Honourable P. C. KNOX,
Secretary of State,
etc., etc., etc.

**TREATY OF SEPTEMBER 3, 1783, BETWEEN THE UNITED STATES
AND GREAT BRITAIN.**

*Definitive treaty of peace between the United States of America and
His Britannic Majesty, concluded September 3, 1783.*

In the name of the Most Holy and Undivided Trinity.

It having pleased the Divine Providence to dispose the hearts of the most serene and most potent Prince George the Third, by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith, Duke of Brunswick and Luneburg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &c., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony: And having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles, signed at Paris, on the 30th of Nov'r, 1782, by the commissioners empowered on each part, which articles were agreed to be inserted in and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such treaty accordingly; and the treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the provisional articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say, His Britannic Majesty on his part, David Hartley, esqr., member of the Parliament of Great Britain; and the said United States on their part, John Adams, esqr., late a commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and chief justice of the said State, and Minister Plenipotentiary of the said United States to their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, esq're, late Delegate in Congress from the State of Pennsylvania, president of the convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, esq're, late president of Congress, and chief justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiaries for the concluding and signing the present definitive

treaty; who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles:

ARTICLE I.

His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, propriety and territorial rights of the same, and every part thereof.

ARTICLE II.

And that all disputes which might arise in future, on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are, and shall be their boundaries, viz: From the northwest angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence strait to the head of St. Mary's River; and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic

Ocean from those which fall into the river St. Lawrence comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

ARTICLE III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulph of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

ARTICLE IV.

It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

ARTICLE V.

It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British subjects, and also of the estates, rights, and properties of persons resident in districts in the possession of His Majesty's arms, and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights, and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail. And that Congress shall also

earnestly recommend to the several States, that the estates, rights, and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

ARTICLE VI.

That there shall be no future confiscations made, nor any prosecutions commenc'd against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account suffer any future loss or damage, either in his person, liberty, or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

ARTICLE VII.

There shall be a firm and perpetual peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease: All prisoners on both sides shall be set at liberty, and His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every port, place, and harbour within the same; leaving in all fortifications the American artillery that may be therein: And shall also order and cause all archives, records, deeds, and papers, belonging to any of the said States, or their citizens, which, in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and deliver'd to the proper States and persons to whom they belong.

ARTICLE VIII.

The navigation of the river Mississippi, from its source to the ocean, shall for ever remain free and open to the subjects of Great Britain, and the citizens of the United States.

ARTICLE IX.

In case it should so happen that any place or territory belonging to Great Britain or to the United States, should have been conquer'd by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation.

ARTICLE X.

The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties, in the space of six months, or sooner if possible, to be computed from the day of the signature of the present treaty. In witness whereof, we the undersigned, their Ministers Plenipotentiary, have in their name and in virtue of our full powers, signed with our hands the present definitive treaty, and caused the seals of our arms to be affix'd thereto.

Done at Paris, this third day of September, in the year of our Lord one thousand seven hundred and eighty-three.

D. HARTLEY.	[L. S.]
JOHN ADAMS.	[L. S.]
B. FRANKLIN.	[L. S.]
JOHN JAY.	[L. S.]

UNRATIFIED TREATY OF DECEMBER 31, 1806.

Treaty of amity, commerce, and navigation, between His Britannic Majesty and the United States of America.

His Britannic Majesty and the United States of America, being equally desirous to promote and perpetuate the good understanding and friendship which happily subsist between the subjects of the United Kingdom and the citizens of the United States, and for that purpose to regulate the commerce and navigation between their respective countries, territories, and people, on the basis of reciprocity and mutual convenience, have respectively named their plenipotentiaries, and have given to them full powers to make and conclude a treaty of amity, navigation and commerce; that is to say, His Britannic Majesty has named for his plenipotentiaries, Henry Richard Vassal, Lord Holland, one of His Majesty's privy council and lord keeper of His Majesty's privy seal, and William, Lord Auckland, one of his Majesty's privy council, and President of the committee of council for all matters of trade and foreign plantations: and the President of the United States, by and with the advice of the Senate thereof, hath appointed for their plenipotentiaries, James Monroe and William Pinkney, commissioners extraordinary and plenipotentiaries; who, after having exchanged their respective full powers, have agreed on the following articles:

ART. 1. There shall be a firm, inviolable and universal peace, and a true and sincere friendship, between His Britannic Majesty, his heirs and successors, and the United States of America, and between their respective countries, territories, cities, towns, and people, of every degree, without exception of persons or places.

ART. 2. It is agreed that the several articles of the treaty of amity, commerce, and navigation, between His Majesty and the United States, made at London, on the nineteenth day of November, one thousand seven hundred and ninety-four, which have not expired, nor, as yet, had their full operation and effect, shall be confirmed in their best form, and in their full tenor; and that the contracting parties will also from time to time enter into friendly explanation on the subject of the said articles, for the purpose of removing all such doubts as may arise or have arisen as to the true import of the same, as well as for the purpose of rendering the said articles more conformable to their mutual wishes and convenience.

ART. 3. His Majesty agrees that the vessels, belonging to the United States of America, and sailing direct from the ports of the said States, shall be admitted and hospitably received in all the seaports and harbors of the British dominions in the East Indies; and that the citizens of the said United States may freely carry on a trade between the said territories and the said United States in all articles of which the importation or exportation respectively to or from the said territories shall not be entirely prohibited. Provided only that it shall not be lawful for them in any time of war between the British Gov-

ernment and any other Power or State whatever, to export from the said territories, without the special permission of the British Government there, any military stores, or naval stores, or rice. The citizens of the United States shall pay for their vessels, when admitted into the said ports, no other or higher tonnage than shall be payable on British vessels when admitted into the ports of the United States; and they shall pay no higher or other duties or charges on the importation or exportation of the cargoes of the said vessels than shall be payable on the same articles when imported or exported in British vessels. But it is expressly agreed, that the vessels of the United States shall not carry any of the articles exported by them from the said British territories to any port or place, except to some port or place in America, where the same shall be unladen, and such regulations shall be adopted by both parties as shall, from time to time, be found necessary to enforce the due and faithful observance of this stipulation.

It is also understood, that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories; but the vessels going with their original cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the coasting trade; neither is this article to be construed to allow the citizens of the said States to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British Government established there; and if any transgressions should be attempted against the regulations of the British Government in this respect, the observance of the same shall and may be enforced against the citizens of America, in the same manner as against British subjects or others transgressing the same rule. And the citizens of the United States, whenever they arrive in any port or harbor in the said territories, or if they should be permitted in manner aforesaid to go to any other place therein, shall always be subject to the laws, government, and jurisdiction of whatever nature, established in such harbor, port, or place, according as the same may be. The citizens of the United States may also touch for refreshment at the island of St. Helena, but subject in all respects to such regulations as the British Government may, from time to time, establish there.

ART. 4. There shall be between all the dominions of His Majesty in Europe, and the territories of the United States, a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries respectively shall have liberty, freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places, and rivers, within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time; also to hire and possess houses and warehouses for the purposes of commerce; and generally, the merchants and traders on each side shall enjoy the most complete protection and security for their commerce, but subject always, as to what respects this article, to the laws and statutes of the two countries respectively.

ART. 5. It is agreed that no other or higher duties shall be paid by the ships or merchandise of the one party in the ports of the

other than such as are paid by the like vessels or merchandise of all other nations. Nor shall any other or higher duty be imposed in one country on the importation of any articles the growth, produce, or manufacture of the other, than are or shall be payable on the importation of the like articles being of the growth, produce, or manufacture of any other foreign country.

Nor shall any prohibition be imposed on the exportation or importation of any articles to or from the territories of the two parties respectively, which shall not equally extend to all other nations. But the British Government reserves to itself the right of imposing on American vessels entering into the British ports in Europe a tonnage duty equal to that which shall at any time be payable by British vessels in the ports of America; and the Government of the United States reserves to itself a right of imposing on British vessels entering into the ports of the United States a tonnage duty equal to that which shall at any time be payable by American vessels in the British ports in Europe.

It is agreed that in the trade of the two countries with each other, the same duties of exportation and importation on all goods and merchandise, and also the same drawbacks and bounties, shall be paid and allowed in either country, whether such importation or exportation shall be in British or American vessels.

ART. 6. The high contracting parties not having been able to arrange at present by treaty any commercial intercourse between the territories of the United States and His Majesty's islands and ports in the West Indies, agree that until that subject shall be regulated in a satisfactory manner, each of the parties shall remain in the complete possession of its rights in respect to such an intercourse.

ART. 7. It shall be free for the two contracting parties respectively to appoint consuls for the protection of trade, to reside in the dominions and territories aforesaid; and the said consuls shall enjoy those liberties and rights which belong to them by reason of their function. But before any consul shall act as such, he shall be in the usual forms approved and admitted by the party to whom he is sent; and it is hereby declared to be lawful and proper, that in case of illegal or improper conduct towards the laws or Government, a consul may either be punished according to law, if the laws will reach the case, or be dismissed, or even sent back; the offended Government assigning to the other the reasons for the same.

Either of the parties may except from the residence of consuls such particular places as such party shall judge proper to be so excepted.

ART. 8. It is agreed that in all cases where vessels shall be captured, or detained on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war, or for other lawful cause, the said vessel shall be brought to the nearest or most convenient port; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy, or is otherwise confiscable, shall be made prize, and the vessel, unless by law subject to condemnation, shall be at liberty to proceed with the remainder of the cargo without an impediment. And it is agreed that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes so brought

in for adjudication, and in payment or recovery for any indemnification adjudged or agreed to be paid to the masters or owners of such ships.

It is also agreed that in all cases of unfounded detention, or other contravention of the regulations stipulated by the present treaty, the owners of the vessel and cargo so detained shall be allowed damages proportioned to the loss occasioned thereby, together with the costs and charges of the trial.

ART. 9. In order to regulate what is in future to be esteemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war by land or by sea, such as cannon, muskets, mortars, petards, bombs, grenadoes, carcasses, saucisses, carriages for cannon, musket-rests, bandoliers, gunpowder, matches, saltpetre, balls, pikes, swords, headpieces, cuirasses, halberts, lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war; as also timber for ship building, copper in sheets, sailcloth, hemp, and cordage, and in general (with the exception of unwrought iron and firplanks, and also with the exception of tar and pitch, when not going to a port of naval equipment, in which case they shall be entitled to pre-emption) whatever may serve directly to the equipment of vessels; and all the above articles are hereby declared to be just objects of confiscation whenever they are attempted to be carried to an enemy. But no vessel shall be detained on pretence of carrying contraband of war, unless some of the above-mentioned articles not excepted are found on board of the said vessel at the time it is searched.

ART. 10. Whereas, in consideration of the distance and of other circumstances incident to the situation of the high contracting parties, it may frequently happen that vessels may sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after such notice she shall again attempt to enter, but she shall not be permitted to go to any other port or place she may think proper; nor shall any vessel or goods of either party that may have entered into such port or place before the same was besieged, blockaded, or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the owners or proprietors thereof.

Neither of the parties when at war shall, during the continuance of the treaty, take from on board the vessels of the other the subjects of the opposite belligerent, unless they be in the actual employment of such belligerent.

ART. 11. Whereas differences have arisen concerning the trading with the colonies of His Majesty's enemies, and the instructions given by His Majesty to his cruisers in regard thereto, it is agreed that during the present hostilities, all articles of the growth, produce, and manufacture of Europe, not being contraband of war, may be freely carried from the United States to the port of any colony not blockaded belonging to His Majesty's enemies, provided such goods shall previously have been entered and landed in the United States, and

shall have paid the ordinary duties on such articles so imported for home consumption; and, on re-exportation, shall, after the drawback, remain subject to a duty equivalent to not less than one percent. ad valorem; and that the said goods and the vessels conveying the same shall, from the time of their clearance from the American port, be *bona fide* the property of citizens and inhabitants of the United States; and in like manner that all articles, not being contraband of war, and being the growth and produce of the enemy's colonies, may be brought to the United States, and after having been there landed, may be freely carried from thence to any port of Europe not blockaded, provided such goods shall previously have been entered and landed in the said United States, and shall have paid the ordinary duties on colonial articles so imported for home consumption; and, on reexportation, shall, after the drawback, remain subject to a duty equivalent to and not less than two per cent. ad valorem; and provided that the said goods and the vessel conveying the same be *bona fide* the property of citizens and inhabitants of the United States.

Provided always, That this article, or any thing therein contained, shall not operate to the prejudice of any right belonging to either party; but, that after the expiration of the time limit for the article, the rights on both sides shall revive and be in full force.

ART. 12. And whereas it is expedient to make special provisions respecting the maritime jurisdiction of the high contracting parties on the coast of their respective possessions in North America on account of peculiar circumstances belonging to those coasts, it is agreed that in all cases where one of the said high contracting parties shall be engaged in war. and the other shall be at peace, the belligerent Power shall not stop except for the purpose hereafter mentioned, the vessels of the neutral Power, or the unarmed vessels of other nations, within five marine miles from the shore belonging to the said neutral Power on the American seas.

Provided That the said stipulation shall not take effect in favor of the ships of any nation or nations which shall not have agreed to respect the limits aforesaid, as the line of maritime jurisdiction of the said neutral state. And it is further stipulated, that if either of the high contracting parties shall be at war with any nation or nations which shall not have agreed to respect the said special limit or line of maritime jurisdiction herein agreed upon, such contracting party shall have the right to stop or search any vessel beyond the limit of a cannon shot, or three marine miles from the said coast of the neutral Power, for the purpose of ascertaining the nation to which such vessel shall belong; and with respect to the ships and property of the nation or nations not having agreed to respect the aforesaid line of jurisdiction, the belligerent Power shall exercise the same rights as if this article did not exist; and the several provisions stipulated by this article shall have full force and effect only during the continuance of the present treaty.

ART. 13. With respect to the searching of merchant ships, the commanders of ships of war and privateers shall conduct themselves as favorably as the course of the war then existing may possibly permit towards the most friendly Power that may remain neuter, observing as much as possible the acknowledged principles and rules of the law of nations; and for the better security of the respective

subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men of war or privateers of either party, all commanders of ships of war and privateers, and all others, the said subjects and citizens, shall forebear doing any damage to those of the other party, or committing any outrage against them; and if they act to the contrary, they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.

For this cause all commanders of privateers, before they receive their commissions, shall hereafter be compelled to give, before a competent judge, sufficient security by at least two responsible sureties, who have no interest in the said privateer, each of whom, together with the said commander, shall be jointly and severally bound in the sum of two thousand pounds sterling, or, if such ship be provided with above one hundred and fifty seamen or soldiers, in the sum of four thousand pounds sterling, to satisfy all damages and injuries, which the said privateers or officers, or men, or any of them, may do or commit during their cruise, contrary to the tenor of this treaty, or to the laws or instructions for regulating their conduct; and further, that in all cases of aggressions, the said commissions shall be revoked and annulled.

It is also agreed, that whenever a Judge of a Court of Admiralty of either of the parties shall pronounce sentence against any vessel, or goods, or property, belonging to the subjects or citizens of the other party, a formal and duly authenticated copy of all the proceedings in the cause, and of the said sentence, shall, if required, be delivered to the commander of the said vessel, without the smallest delay, he paying all legal fees and demands for the same.

ART. 14. It is further agreed, that both the said contracting parties shall not only refuse to receive any pirates into any of their ports, havens, or towns, or permit any of their inhabitants to receive, protect, harbor, conceal or assist them in any manner, but will bring to condign punishment all such inhabitants as shall be guilty of such acts or offences.

And all their ships, with the goods or merchandises taken by them and brought into the ports of either of the said parties, shall be seized, as far as they can be discovered, and shall be restored to the owners, or the factors or agents duly deputed, and authorized in writing by them, (proper evidence being shown in the Court of Admiralty for proving the property,) even in case such effects should have passed into other hands by sale, if it be proved that the buyers knew, or had good reason to believe, or suspect that they had been piratically taken.

ART. 15. It is likewise agreed, that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign Prince or state, enemies to the other party; nor shall the enemies of one of the parties be permitted to invite, or endeavor to enlist in the military service, any of the subjects or citizens of the other party; and the laws against all such offences and aggressions shall be punctually executed; and if any subject or citizen of the said parties, respectively, shall accept any foreign commission or

letters of marque for arming any vessel, to act as a privateer against the other party, it is hereby declared to be lawful for the said party to treat and punish the said subject or citizen having such commission or letters of marque as a pirate.

ART. 16. It is expressly stipulated, that neither of the said contracting parties will order or authorize any acts of reprisal against the other, on complaints of injuries and damages, until the said party shall first have presented to the other a statement thereof, verified by competent proof and evidence, and demanded justice and satisfaction, and the same shall either have been refused or unreasonably delayed.

ART. 17. The ships of war of each of the contracting parties shall at all times be hospitably received in the ports of the other, their officers and crews paying due respect to the laws and Government of the country. The officers shall be treated with that respect which is due to the commission which they bear, and, if any insult should be offered to them by any of the inhabitants, all offenders in this respect shall be punished as disturbers of the peace and amity between the two countries. And both contracting parties agree, that in case any vessel of the one should, by stress of weather, danger from enemies, or other misfortunes, be reduced to the necessity of seeking shelter in any of the ports of the other, into which such vessel could not in ordinary cases claim to be admitted, she shall, on manifesting that necessity to the satisfaction of the Government of the place, be hospitably received, and permitted to refit and to purchase at the market price such necessities as she may stand in need of, conformably to such orders and regulations as the Government of the place, having respect to the circumstances of each case, shall prescribe. She shall not be allowed to break bulk or unload her cargo, unless the same shall be *bona fide* necessary to her being refitted; nor shall she be obliged to pay any duties whatever except only on such articles as she may be permitted to sell for the purpose aforesaid.

ART. 18. It shall not be lawful for any foreign privateers, (not being subjects or citizens of either of the said parties,) who have commissions from any Power or State in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that Prince or State from whom they obtained their commissions.

ART. 19. It shall be lawful for the ships of war and privateers belonging to the said parties, respectively, to carry whithersoever they please the ships and goods taken from their enemies, without being obliged to pay any fees to the officers of the Admiralty, or to any judges whatever; nor shall the said prizes, when they arrive at and enter the ports of the said parties, be detained or seized; nor shall the searchers or other officers of those places visit such prizes, (except for the purpose of preventing the carrying of any part of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation, or commerce;) nor shall such officers take cognizance of the validity of such prizes, but they shall be at liberty to hoist sail and depart as speedily as may be, and carry their said prizes to the places mentioned in their commissions or patents,

which the commanders of the said ships of war or privateers shall be obliged to show.

No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties; but, if forced by stress of weather or the dangers of the sea to enter them, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this treaty contained shall, however, be construed to operate contrary to the former and existing public treaties with other sovereigns or states; but the two parties agree that, while they continue in amity, neither of them will in future make any treaty that shall be inconsistent with this or the preceding article.

Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coast, nor within the jurisdiction described in Article 12, so long as the provisions of the said article shall be in force, by ships of war or others having commissions from any prince, republic, or state whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

ART. 20. If at any time a rupture should take place (which God forbid) between His Majesty and the United States, the merchants and others of each of the two nations, residing in the dominions of the other, shall have the privilege of remaining and continuing their trade, so long as they do it peaceably, and commit no offence against the laws; and in case their conduct should render them suspected, and the respective Governments should think proper to order them to remove, the term of twelve months from the publication of the order shall be allowed them for that purpose, to remove with their families, effects and property; but this favor shall not be extended to those who shall act contrary to the established laws; and, for greater certainty, it is declared that such rupture shall not be deemed to exist while negotiations for accommodating differences shall be pending, nor until the respective ambassadors or ministers, if such there shall be, shall be recalled or sent home on account of such differences, and not on account of personal misconduct, according to the nature and degree of which both parties retain their rights either to request the recall or immediately to send home the ambassador or minister of the other, and that without prejudice to their mutual friendship and good understanding.

ART. 21. It is further agreed that His Majesty and the United States, on mutual requisitions by them respectively, or by their respective ministers or officers authorized to make the same, will deliver up to justice all persons who, being charged with murder or forgery committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other; provided that this shall only be done on such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive.

ART. 22. In the event of a shipwreck happening in a place belonging to one or other of the high contracting parties, not only every assistance shall be given to the unfortunate persons, and no violence done to them, but also the effects which they shall have thrown out of the ship into the sea shall not be concealed or detained, or damaged, under any pretext whatever. On the contrary, the above mentioned effects and merchandise shall be preserved, and restored to them upon a suitable recompense being given to those who shall have assisted in saving their persons, vessels, and effects.

ART. 23. And it being the intention of the high contracting parties, that the people of their respective dominions shall continue to be on the footing of the most favored nation, it is agreed that, in case either party shall hereafter grant any additional advantages in navigation or trade to any other nation, the subjects or citizens of the other party shall fully participate therein.

ART. 24. The high contracting parties engage to communicate to each other, without delay, all such laws as have been or shall be hereafter enacted by their respective Legislatures, as also all measures which shall have been taken for the abolition or limitation of the African slave trade; and they further agree to use their best endeavors to procure the cooperation of other Powers for the final and complete abolition of a trade so repugnant to the principles of justice and humanity.

ART. 25. And it is further agreed, that nothing herein contained shall contravene or affect the due execution of any treaty or treaties now actually subsisting between either of the high contracting parties and any other Power or Powers.

ART. 26. This treaty, when the same shall have been ratified by His Majesty and by the President of the United States, with the advice of their Senate, and the respective ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said States for ten years, from the date of the exchange of the said ratification, and shall be reciprocally executed and observed with punctuality and the most sincere regard to good faith.

In faith whereof, we, the undersigned, plenipotentiaries on the part of His Majesty the King of Great Britain, and the commissioners extraordinary and plenipotentiaries on the part of the United States of America, have signed this present treaty, and have caused to be affixed thereto the seal of our arms.

Done at London, this thirty-first day of December, one thousand eight hundred and six.

VASSAL HOLLAND,
AUCKLAND,
JAS. MONROE,
WM. PINKNEY.

TREATY OF JULY 3, 1815, BETWEEN GREAT BRITAIN AND THE UNITED STATES.

[Ratifications exchanged, December 22, 1815.]

The United States of America and His Britannick Majesty being desirous, by a convention, to regulate the Commerce and Navigation, between their respective countries territories, and people, in such a manner as to render the same reciprocally beneficial and satisfactory, Have respectively named Plenipotentiaries and given them full powers to treat of and conclude such Convention that is to say

The President of the United States by and with the advice and consent of the Senate thereof hath appointed for their Plenipotentiaries John Quincy Adams, Henry Clay, and Albert Gallatin Citizens of the United States, And His Royal Highness the Prince Regent acting in the name & on the behalf of His Majesty has named for His Plenipotentiaries The Right Honourable Frederick John Robinson Vice President of the Committee of Privy Council for Trade and Plantations, Joint Paymaster of His Majesty's Forces, and a Member of the Imperial Parliament, Henry Goulburn Esquire, a Member of the Imperial Parliament and Under Secretary of State, and William Adams Esquire, Doctor of Civil Laws,

And the said Plenipotentiaries having mutually produced and shewn their said full powers, and exchanged copies of the same, have agreed on and concluded the following articles, vide licet.

ARTICLE THE FIRST.

There shall be between the Territories of the United States of America and all the Territories of His Britannick Majesty in Europe a reciprocal liberty of commerce. The Inhabitants of the two countries, respectively shall have liberty freely and securely to come with their ships and cargoes to all such places Ports and Rivers in the Territories aforesaid to which other Foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of the said Territories respectively, also to hire and occupy Houses and warehouses for the purposes of their commerce, and generally the Merchants and Traders of each Nation respectively shall enjoy the most complete protection and security for their Commerce but subject always to the laws and statutes of the two countries respectively

ARTICLE THE SECOND.

No higher or other Duties shall be imposed on the importation into the United States of any articles the growth, produce or Manufacture of His Britannick Majesty's Territories in Europe and no higher or other duties shall be imposed on the importations into the Territories of His Britannick Majesty in Europe of any articles the growth produce or manufacture of the United States than are or shall

be payable on the like articles being the growth produce or manufacture of any other foreign country nor shall any higher or other duties or charges be imposed in either of the two Countries, on the Exportation of any articles to the United States, or to His Britannick Majesty's Territories in Europe respectively than such as are payable on the Exportation of the like articles to any other foreign country. nor shall any prohibition be imposed on the exportation or importation of any articles the growth produce or manufacture of the United States or of His Britannick Majesty's territories in Europe to or from the said Territories of His Britannick Majesty in Europe, or to or from the said United States, which shall not equally extend to all other Nations.

No higher or other duties or charges shall be imposed in any of the Ports of the United States on British Vessels, than those payable in the same ports by vessels of the United States; nor in the ports of any of His Britannick Majestys Territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels.

The same duties shall be paid on the importation into the United States of any articles the growth produce, or manufacture of His Britannick Majestys territories in Europe, whether such importation shall be in vessels of the United States or in British vessels, and the same duties shall be paid on the importation into the ports of any of His Britannick Majesty's Territories in Europe of any article the growth produce or manufacture of the United States whether such importation shall be in British vessels, or in vessels of the United States.

The same Duties shall be paid and the same Bounties allowed on the exportation of any articles the growth produce or manufacture of His Britannick Majesty's Territories in Europe to the United States whether such exportation shall be in vessels of the United States or in British vessels, and the same duties shall be paid and the same bounties allowed on the exportation of any articles the growth, produce or manufacture of the United States to His Britannick Majesty's Territories in Europe whether such exportation shall be in British vessels, or in vessels of the United States.

It is further agreed that in all cases where Drawbacks are or may be allowed upon the reexportation of any Goods the growth, produce or manufacture of either Country respectively the amount of the said drawbacks shall be the same whether the said goods shall have been originally imported in a British or an American vessel—But when such reexportation shall take place from the United States in a British vessel or from the Territories of His Britannick Majesty in Europe in an American vessel to any other foreign nation the two Contracting Parties reserve to themselves respectively the right of regulating or diminishing in such case the amount of the said drawback.

The intercourse between the United States and His Britannick Majesty's possessions in the West indies and on the Continent of North America shall not be affected by any of the provisions of this article, but each party shall remain in the complete possession of its rights with respect to such an intercourse.

ARTICLE THE THIRD.

His Britannick Majesty agrees that the vessels of the United States of America shall be admitted and hospitably received at the principal settlements of the British Dominions in the East Indies vide licit, Calcutta, Madras Bombay and Prince of Wales' Island, and that the citizens of the said United States may freely carry on trade between the said principal settlements and the said United States in all articles of which the importation & exportation respectively to and from the said Territories shall not be entirely prohibited—provided only that it shall not be lawful for them in any time of War between the British Government and any State or Power whatever to export from the said Territories without the special permission of the British Government any military stores or naval stores or Rice. The Citizens of the United States shall pay for their vessels when admitted no higher or other duty or charge than shall be payable on the vessels of the most favored European nations and they shall pay no higher or other duties or charges on the importation or exportation of the Cargoes of the said Vessels than shall be payable on the same articles when imported or exported in the vessels of the most favored European Nations.

But it is expressly agreed that the vessels of the United States shall not carry any articles from the said principal settlements to any Port or place except to some Port or Place in the United States of America where the same shall be unladen.

It is also understood that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting Trade of the said British Territories, but the vessels of the United States having in the first instance proceeded to one of the said principal settlements of the British Dominions in the East Indies and then going with their Original Cargoes or part thereof from one of the said principal settlements to another shall not be considered as carrying on the Coasting Trade. The vessels of the United States may also touch for refreshment but not for commerce in the course of their voyage to or from the British Territories in India, or to or from the Dominions of the Emperor of China, at the Cape of Good Hope the Island of St. Helena or such other places as may be in the possession of Great Britain in the African or Indian Seas, it being well understood that in all that regards this article The Citizens of the United States shall be subject in all respects to the Laws and regulations of the British Government from time to time established.

ARTICLE THE FOURTH.

It shall be free for each of the two contracting parties respectively to appoint Consuls for the protection of trade to reside in the Dominions and Territories of the other party, but before any Consul shall act as such He shall in the usual form be approved and admitted by the Government to which He is sent, and it is hereby declared that in case of illegal or improper conduct towards the Laws or Government of the Country to which He is sent such Consul may either be punished according to Law if the Laws will reach the case

or be sent back the offended Government assigning to the other the reasons for the same.

It is hereby declared that either of the contracting parties may except from the residence of Consuls such particular places as such Party shall judge fit to be so excepted

ARTICLE THE FIFTH.

This convention, when the same shall have been duly ratified by the President of the United States by and with the advice and consent of their Senate and by His Britannick Majesty and the respective ratifications mutually exchanged shall be binding and obligatory on the said United States and His Majesty for four Years from the date of its signature and the ratifications shall be exchanged in six months from this time or sooner if possible.

Done at London this third day of July in the year of our Lord one Thousand eight Hundred and Fifteen.

[SEAL.]
[SEAL.]
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[SEAL.]
[SEAL.]

JOHN QUINCY ADAMS
H. CLAY
ALBERT GALLATIN
FREDERICK JOHN ROBINSON
HENRY GOULBURN
WILLIAM ADAMS

[Annex.]

DECLARATION.

The Undersigned, His Britannick Majesty's Charge d'Affairs in the United States of America, is commanded by His Royal Highness the Prince Regent, acting in the name and on the behalf of His Majesty, to explain and declare upon the Exchange of the Ratifications of the Convention concluded at London on the third of July of the present year, for regulating the commerce and navigation between the two countries, That in consequence of events which have happened in Europe subsequent to the signature of the convention aforesaid, it has been deemed expedient and determined in conjunction with the Allied Sovereigns, that St. Helena shall be the place allotted for the future residence of General Napoleon Bonaparte, under such regulations as may be necessary for the perfect security of his person; and it has been resolved, for that purpose that all ships and vessels whatever, as well British ships and Vessels as others, excepting only ships belonging to the East India Company shall be excluded from all communication with or approach to that Island.

It has therefore become impossible to comply with so much of the third article of the Treaty as relates to the liberty of touching for refreshment at the Island of St. Helena, and the Ratifications of the said Treaty will be exchanged under the explicit Declaration and Understanding that the Vessels of the United States cannot be allowed to touch at, or hold any communication whatever with the said Island, so long as the said Island shall continue to be the place of residence of the said Napoleon Bonaparte.

ANTHONY ST. JNO. BAKER.

WASHINGTON, *November 24, 1815.*

TREATY OF SEPTEMBER 3, 1783, BETWEEN GREAT BRITAIN AND FRANCE.

The Definitive Treaty of Peace and Friendship, between his Britannic Majesty, and the Most Christian King. Signed at Versailles, the 3d of September, 1783. As published by Authority.

In the Name of the Most Holy and Undivided Trinity, Father, Son, and Holy Ghost. So be it.

Be it known to all those whom it shall or may concern. The most serene and most potent prince George the Third, by the grace of God, king of Great Britain, France, and Ireland, Duke of Brunswick and Lunenburg, archtreasurer and elector of the holy Roman empire, &c. and the most serene and most potent Prince Lewis the Sixteenth, by the grace of God, most Christian King, being equally desirous to put an end to the war, which for several years past afflicted their respective dominions, accepted the offer which their majesties the emperor of the Romans, and the empress of all the Russias, made to them, of their interposition, and of their mediation; but their Britannic and most Christian majesties, animated with a mutual desire of accelerating the re-establishment of peace, communicated to each other their laudable intention; which Heaven so far blessed, that they proceeded to lay the foundations of peace, by signing preliminary articles at Versailles, the 20th of January in the present year. Their said majesties the king of Great Britain, and the most Christian king, thinking it incumbent upon them to give their imperial majesties a signal proof of gratitude for the generous offer of their mediation, invited them, in concert, to concur in the completion of the great and salutary work of peace, by taking part, as mediators, in the definitive treaty to be concluded between their Britannic and most Christian majesties. Their said Imperial majesties having readily accepted that invitation, they have named, as their representatives, viz. his majesty the emperor of the Romans, the most illustrious and most excellent Lord Florimond, Count Mercy-Argenteau, viscount of Loo, baron of Crichegne, knight of the Golden Fleece, chamberlain, actual privy counsellor of state to his Imperial and royal Apostolic majesty, and his ambassador to his most Christian majesty; and her majesty the empress of all the Russias, the most illustrious and most excellent lord, Prince Iwan Bariatinskoy, lieutenant general of the forces of her Imperial majesty of all the Russias, knight of the orders of St. Anne, and of the Swedish sword, and her minister plenipotentiary to his most Christian majesty; and the Lord Arcadi de Marcoff, counsellor of state to her Imperial majesty of all the Russias, and her minister plenipotentiary to his most Christian majesty. In consequence, their said majesties the king of Great Britain, and the most Christian king, have named and constituted for their plenipotentiaries, charged with the concluding and signing of

the definitive treaty of peace, viz. the king of Great Britain, the most illustrious and most excellent Lord George, duke and earl of Manchester, Viscount Mandeville, baron of Kimbolton, lord lieutenant and custos rotulorum of the county of Huntingdon, actual privy counsellor to his Britannic majesty and his ambassador extraordinary and plenipotentiary to his most Christian majesty; and the most Christian king, the most illustrious and most excellent Lord Charles Gravier, Count de Vergennes, baron of Welferding, &c. the king's counsellor in all his councils, commander in his orders, president of the royal council of finances, counsellor of state military, minister and secretary of state, and of his commands and finances: who, after having exchanged their respective full powers, have agreed upon the following articles.

ART. I. There shall be a christian, universal, and perpetual peace, as well by sea as by land, and a sincere and constant friendship shall be re-established between their Britannic and most Christian majesties, and between their heirs and successors, kingdoms, dominions, provinces, countries, subjects and vassals, of what quality or condition soever they be, without exception either of places or persons; so that the high contracting parties shall give the greatest attention to the maintaining between themselves, and their said dominions and subjects, this reciprocal friendship and intercourse, without permitting hereafter, on either part, any kind of hostilities to be committed, either by sea or by land, for any cause, or under any pretence whatsoever: and they shall carefully avoid, for the future, every thing which might prejudice the union happily re-established, endeavouring, on the contrary, to procure reciprocally for each other, on every occasion, whatever may contribute to their mutual glory, interests, and advantage, without giving any assistance or protection, directly or indirectly, to those who would do any injury to either of the high contracting parties. There shall be a general oblivion and amnesty of every thing which may have been done or committed, before or since the commencement of the war which is just ended.

ART. II. The treaties of Westphalia of 1648; the treaties of peace of Nimeguen of 1678, and 1679; of Ryswick of 1697; those of peace and of commerce of Utrecht of 1713; that of Baden of 1714; that of the triple alliance of the Hague of 1717; that of the quadruple alliance of London of 1718; the treaty of peace of Vienna of 1738; the definitive treaty of Aix-la-Chapelle of 1748; and that of Paris of 1763, serve as a basis and foundation to the peace, and to the present treaty; and for this purpose they were all renewed and confirmed in the best form, as well as all the treaties in general which subsisted between the high contracting parties before the war, as if they were herein inserted word for word; and so they are to be exactly observed for the future in their full tenor, and religiously executed by both parties, in all the points which shall not be derogated from by the present treaty of peace.

ART. III. All the prisoners taken on either side, as well by land as by sea, and the hostages carried away or given during the war, and to this day, shall be restored, without ransom, in six weeks at latest, to be computed from the day of the exchange of the ratifications of the present treaty; each crown respectively discharging the advances which shall have been made, for the subsistence and maintenance of their prisoners, by the sovereign of the country where they shall have

been detained, according to the receipts and attested accounts, and other authentic vouchers, which shall be furnished on each side; and sureties shall be reciprocally given for the payment of the debts which the prisoners may have contracted in the countries where they may have been detained until their entire release. And all ships, as well men of war as merchant ships, which may have been taken since the expiration of the terms agreed upon for the cessation of hostilities by sea, shall likewise be restored *bona fide*, with all their crew and cargoes. And the execution of this article shall be proceeded upon immediately after the exchange of the ratifications of this treaty.

ART. IV. His majesty the king of Great Britain is maintained in his right to the island of Newfoundland, and to the adjacent islands, as the whole were assured to him by the thirteenth article of the treaty of Utrecht; excepting the islands of St. Pierre and Miquelon, which are ceded in full right by the present treaty to his most Christian majesty.

ART. V. His majesty the most Christian king, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in fifty degrees north latitude; and his majesty the king of Great Britain consents on his part, that the fishery assigned to the subjects of his most Christian majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the island of Newfoundland, shall extend to the place called Cape Raye, situated in forty-seven degrees, fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present article, as they had the right to enjoy that which was assigned to them by the treaty of Utrecht.

ART. VI. With regard to the fishery in the gulf of St. Laurence, the French shall continue to exercise it conformably to the fifth article of the treaty of Paris.

ART. VII. The king of Great Britain restores to France the island of St. Lucia, in the condition it was in when it was conquered by the British arms: and his Britannic majesty cedes and guaranties to his most Christian majesty the island of Tobago. The Protestant inhabitants of the said island, as well as those of the same religion, who shall have settled at St. Lucia, whilst that island was occupied by the British arms, shall not be molested in the exercise of their worship: and the British inhabitants, or others who may have been subjects of the king of Great Britain in the aforesaid islands, shall retain their possessions upon the same titles and conditions by which they have acquired them; or else they may retire in full security and liberty, where they shall think fit, and shall have the power of selling their estates, provided it be to subjects of his most Christian majesty, and of removing their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except on account of debt, or of criminal prosecutions. The term limited for this emigration is fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty. And for the better securing the possessions of the inhabitants of the aforesaid island of Tobago, the most Christian

king shall issue letters patent, containing an abolition of the droit d'aubaine in the said island.

ART. VIII. The most Christian king restores to Great Britain the islands of Grenada, and the Grenadines, St. Vincent's, Dominica, St. Christopher's, Nevis, and Montserrat; and the fortresses of these islands shall be delivered up in the condition they were in when the conquest of them was made. The same stipulations inserted in the preceding article shall take place in favour of the French subjects, with respect to the islands enumerated in the present article.

ART. IX. The king of Great Britain cedes, in full right, and guaranties to his most Christian majesty, the river Senegal, and its dependencies, with the forts of St. Louis, Podor, Galam, Arguin, and Portendic; and his Britannic majesty restores to France the island of Goree, which shall be delivered up in the condition it was in when the conquest of it was made.

ART. X. The most Christian king, on his part, guaranties to the king of Great Britain the possession of Fort James, and of the river Gambia.

ART. XI. For preventing all discussion in that part of the world, the two high contracting parties shall, within three months after the exchange of the ratifications of the present treaty, name commissaries, who shall be charged with the settling and fixing of the boundaries of the respective possessions. As to the gum trade, the English shall have the liberty of carrying it on, from the mouth of the river St. John, to the bay and fort of Portendic inclusively. Provided that they shall not form any permanent settlement, of what nature soever, in the said river St. John, upon the coast, or in the bay of Portendic.

ART. XII. As to the residue of the coast of Africa, the English and French subjects shall continue to resort thereto, according to the usage which has hitherto prevailed.

ART. XIII. The king of Great Britain restores to his most Christian majesty all the settlements which belonged to him at the beginning of the present war, upon the coast of Orixa, and in Bengal, with liberty to surround Chandernagore with a ditch for carrying off the waters; and his Britannic majesty engages to take such measures as shall be in his power for securing to the subjects of France in that part of India, as well as on the coast of Orixa, Coromandel, and Malabar, a safe, free, and independent trade, such as was carried on by the French East India company, whether they exercise it individually, or united in a company.

ART. XIV. Pondicherry shall be in like manner delivered up and guarantied to France, as also Karikal; and his Britannic majesty shall secure, for an additional dependency to Pondicherry, the two districts of Velanour and Bahour; and to Karikal, the four Magans bordering thereupon.

ART. XV. France shall re-enter into the possession of Mahe, as well as of its factory at Surat; and the French shall carry on their trade, on this part of India, conformably to the principles established in the thirteenth article of this treaty.

ART. XVI. Orders having been sent to India by the high contracting parties, in pursuance of the sixteenth article of the preliminaries, it is further agreed, that if, within the term of four months, the respective allies of their Britannic and most Christian

majesties shall not have acceded to the present pacification, or concluded a separate accommodation, their said majesties shall not give them any assistance, directly or indirectly, against the British or French possessions, or against the ancient possessions of their respective allies, such as they were in the year 1776.

ART. XVII. The king of Great Britain, being desirous to give to his most Christian majesty a sincere proof of reconciliation and friendship, and to contribute to render solid the peace reestablished between their said majesties, consents to the abrogation and suppression of all the articles relative to Dunkirk, from the treaty of peace concluded at Utrecht in 1713, inclusive, to this day.

ART. XVIII. Immediately after the exchange of the ratifications, the two high contracting parties shall name commissaries to treat concerning new arrangements of commerce between the two nations, on the basis of reciprocity and mutual convenience; which arrangements shall be settled and concluded within the space of two years, to be computed from the first of January, in the year 1784.

ART. XIX. All the countries and territories which may have been, or which may be conquered in any part of the world whatsoever, by the arms of his Britannic majesty, as well as by those of his most Christian majesty, which are not included in the present treaty, neither under the head of cessions, nor under the head of restitutions, shall be restored without difficulty, and without requiring any compensation.

ART. XX. As it is necessary to appoint a certain period for the restitutions and evacuations to be made by each of the high contracting parties, it is agreed that the king of Great Britain shall cause to be evacuated the Islands of St. Pierre and Miquelon, three months after the ratification of the present treaty, or sooner, if it can be done; St. Lucia, (one of the Charibee islands) and Goree in Africa, three months after the ratification of the present treaty, or sooner, if it can be done. The king of Great Britain shall in like manner, at the end of three months after the ratification of the present treaty, or sooner, if it can be done, enter again into the possessions of the islands of Grenada, the Grenadines, St. Vincent's, Dominica, St. Christopher's, Nevis, and Montserrat. France shall be put in possession of the towns and factories which are restored to her in the East Indies, and of the territories which are procured for her, to serve as additional dependencies to Pondicherry, and to Karikal, six months after the ratification of the present treaty, or sooner, if it can be done. France shall deliver up, at the end of the like term of six months, the towns and territories which her arms may have taken from the English, or their allies, in the East Indies. In consequence whereof, the necessary orders shall be sent by each of the high contracting parties, with reciprocal passports for the ships which shall carry them, immediately after the ratification of the present treaty.

ART. XXI. The decision of the prizes and seizures made prior to the hostilities shall be referred to the respective courts of justice; so that the legality of the said prizes and seizures shall be decided according to the law of nations, and to treaties, in the courts of justice of the nation which shall have made the capture, or ordered the seizures.

ART. XXII. For preventing the revival of the law-suits which have been ended in the islands conquered by either of the high contracting

parties, it is agreed that the judgments pronounced in the last resort, and which have acquired the force of matters determined, shall be confirmed and executed according to their form and tenor.

ART. XXIII. Their Britannic and most Christian majesties promise to observe sincerely, and *bona fide*, all the articles contained and established in the present treaty; and they will not suffer the same to be infringed, directly or indirectly, by their respective subjects; and the said high contracting parties guaranty to each other, generally and reciprocally, all the stipulations of the present treaty.

ART. XXIV. The solemn ratifications of the present treaty, prepared in good and due form, shall be exchanged in this city of Versailles, between the high contracting parties, in the space of a month or sooner, if possible, to be computed from the day of the signature of the present treaty.

In witness whereof, we the under-written ambassador extraordinary, and ministers plenipotentiary, have signed with our hands, in their names, and in virtue of our respective full powers, the present definitive treaty, and have caused the seals of our arms to be affixed thereto.

Done at Versailles, the third day of September, one thousand seven hundred and eighty-three.

GRAVIER DE VERGENNES. [L. S.]
MANCHESTER. [L. S.]

SEPARATE ARTICLES.

ART. I. Some of the titles made use of by the contracting parties, whether in the full powers, and other instruments, during the course of the negotiation, or in the preamble of the present treaty, not being generally acknowledged, it has been agreed that no prejudice should ever result therefrom to either of the said contracting parties; and that the titles taken or omitted, on either side, upon occasion of the said negotiation, and of the present treaty, shall not be cited, or quoted as a precedent.

ART. II. It has been agreed and determined, that the French language, made use of in all the copies of the present treaty, shall not form an example which may be alledged, or quoted as a precedent, or, in any manner, prejudice either of the contracting powers; and that they shall conform, for the future, to what has been observed, and ought to be observed, with regard to, and on the part of powers, who are in the practice and possession of giving and receiving copies of like treaties in a different language from the French; the present treaty having, nevertheless, the same force and virtue as if the afore-said practice had been therein observed.

In witness whereof, we the under-written ambassador extraordinary, and ministers plenipotentiary of their Britannic and most Christian majesties, have signed the present separate articles, and have caused the seals of our arms to be affixed thereto.

Done at Versailles, the third of September, one thousand seven hundred and eighty-three.

GRAVIER DE VERGENNES, [L. S.]
MANCHESTER. [L. S.]

DECLARATION.

THE king having entirely agreed with his most Christian majesty upon the articles of the definitive treaty, will seek every means which shall not only ensure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, his Britannic majesty will take the most positive measures for preventing his subjects from interrupting, in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the island of Newfoundland; and he will, for this purpose, cause the fixed settlements, which shall be formed there, to be removed. His Britannic majesty will give orders, that the French fishermen be not incommoded, in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels.

The thirteenth article of the treaty of Utrecht, and the method of carrying on the fishery which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of his Britannic majesty, on their part, not molesting, in any manner, the French fishermen, during their fishing, nor injuring their scaffolds during their absence.

The king of Great Britain, in ceding the islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said islands, and that of Newfoundland, shall be limited to the middle of the channel.

With regard to India, Great Britain having granted to France every thing that can ascertain and confirm the trade which the latter requires to carry on there, his majesty relies with confidence on the repeated assurances of the court of Versailles, that the power of surrounding Chandernagore with a ditch for carrying off the waters, shall not be exercised in such a manner as to make it become an object of umbrage.

The new state in which commerce may perhaps be found, in all parts of the world, will demand revisions and explanations of the subsisting treaties; but an entire abrogation of those treaties, in whatever period it might be, would throw commerce into such confusion as would be of infinite prejudice to it.

In some of the treaties of this sort there are not only articles which relate merely to commerce, but many others which ensure reciprocally, to the respective subjects, privileges, facilities for conducting their affairs, personal protections, and other advantages, which are not, and which ought not to be of a changeable nature, such as the regulations relating merely to the value of goods and merchandize, variable from circumstances of every kind.

When therefore the state of the trade between the two nations shall be treated upon, it is requisite to be understood, that the alterations

which may be made in the subsisting treaties are to extend only to arrangements merely commercial; and that the privileges and advantages, mutual and particular, be not only preserved on each side, but even augmented, if it can be done.

In this view, his majesty has consented to the appointment of commissaries, one each side, who shall treat solely upon this object.

In witness whereof, we his Britannic majesty's ambassador extraordinary and minister plenipotentiary, being thereto duly authorized, have signed the present declaration, and caused the seal of our arms to be set thereto.

Given at Versailles, the third of September, one thousand seven hundred and eighty-three.

MANCHESTER. [L. S.]

COUNTER DECLARATION.

THE principles which have guided the king, in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the king of Great Britain, that his majesty has had no other design than to render it solid and lasting, by preventing, as much as possible, in the four quarters of the world, every subject of discussion and quarrel. The king of Great Britain undoubtedly places too much confidence in the uprightness of his majesty's intentions, not to rely upon his constant attention to prevent the islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two sovereigns upon this matter, it is sufficiently ascertained by the fifth article of the treaty of peace signed this day, and by the declaration likewise delivered today, by his Britannic majesty's ambassador extraordinary and plenipotentiary; and his majesty declares, that he is fully satisfied on this head.

In regard to the fishery between the island of Newfoundland, and those of St. Pierre and Miquelon, it is not to be carried on, by either party, but to the middle of the channel; and his majesty will give the most positive orders, that the French fishermen shall not go beyond this line. His majesty is firmly persuaded that the king of Great Britain will give like orders to the English fishermen.

The king's desire to maintain the peace comprehends India as well as the other parts of the world; his Britannic majesty may therefore be assured, that his majesty will never permit that an object so inoffensive, and so harmless, as the ditch, with which Chandernagore is to be surrounded, should give any umbrage to the court of London.

The king, in proposing new arrangements of commerce, had no other design than to remedy, by the rules of reciprocity and mutual convenience, whatever may be defective in the treaty of commerce signed at Utrecht, in one thousand seven hundred and thirteen.

----- The king of Great Britain may judge from thence, that his majesty's intention is not in any wise to cancel all the stipulations in the above mentioned treaty; he declares, on the contrary, from henceforth, that he is disposed to maintain all the privileges, facilities, and advantages expressed in that treaty, as far as they shall be reciprocal, or compensated by equivalent advantages. It is to attain

this end, desired on each side, that commissaries are to be appointed to treat upon the state of the trade between the two nations, and that considerable space of time is to be allowed for completing their work. His majesty hopes that this object will be pursued with the same good faith, and the same spirit conciliation, which presided over the discussion of all the other points comprised in the definitive treaty; and his said majesty is firmly persuaded, that the respective commissaries will employ the utmost diligence for the completion of this important work.

In witness whereof, we the underwritten minister plenipotentiary of his most Christian majesty, being thereto duly authorized, have signed the present counter-declaration, and have caused the seal of our arms to be fixed thereto.

Given at Versailles, the third of September, one thousand seven hundred and eighty-three.

GRAVIER DE VERGENNES. [L. S.]

WE, ambassador plenipotentiary of his Imperial and royal apostolic majesty, having acted as mediator in the work of pacification, declare that the treaty of peace signed this day at Versailles, between his Britannic majesty and his most Christian majesty, with the two separate articles thereto annexed, and of which they form a part, as also with all the clauses, conditions and stipulations which are therein contained, was concluded by the mediation of his Imperial and royal Apostolic majesty. In witness whereof, we have signed these presents with our hand, and have caused the seal of our arms to be affixed thereto.

Done at Versailles, the third of September, one thousand seven hundred and eighty-three.

LE COMPTE DE MERCY ARGENTEAU. [L. S.]

WE, ministers plenipotentiary of her Imperial majesty of all the Russias, having acted as mediators in the work of pacification, declare that the treaty of peace, signed this day at Versailles, between his Britannic majesty, and his most Christian majesty, with the two separate articles thereto annexed, and of which they form a part, as also with all the clauses, conditions and stipulations which are therein contained, was concluded by the mediation of her Imperial majesty of all the Russias. In witness whereof, we have signed these presents with our hands, and have caused the seals of our arms to be affixed thereto.

Done at Versailles, the third of September, one thousand seven hundred and eighty-three.

PRINCE IWAN BARIATINOSKOY. [L. S.]
A. MARCOFF. [L. S.]

TREATY OF AUGUST 2, 1839, BETWEEN GREAT BRITAIN AND
FRANCE.

Convention between Her Britannic Majesty and the King of the French, defining and regulating the limits of the exclusive right of the Oyster and other Fishery on the Coasts of Great Britain and France. Signed at Paris, 2nd August, 1839.

Whereas His late Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, appointed, in the year 1837, a mixed Commission, for the purpose of ascertaining and defining the limits within which the subjects of the two countries, respectively, should be at liberty to fish for oysters between the Island of Jersey and the neighbouring coast of France:

And whereas the Commissioners so appointed have agreed upon certain lines, as marked in a Chart hereinafter referred to, as the limits above-mentioned, and have also agreed upon certain arrangements which they conceive to be calculated to prevent the recurrency of disputes, which have at various times arisen between the fishermen of the two countries:

It has been deemed expedient by Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and by His Majesty the King of the French, that the limits agreed upon, and the arrangements proposed, by the said Commissioners, should be recorded and sanctioned by a Convention to be concluded between their said Majesties:

And whereas the High Contracting Parties have also considered it desirable to define and regulate the limits within which the general right of fishery on all parts of the coasts of the two countries shall be exclusively reserved to the subjects of Great Britain and of France respectively; the said High Contracting Parties have therefore named as their Plenipotentiaries for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Granville, Earl Granville, Peer of the Realm, Knight Grand Cross of the Most Honourable Order of the Bath, a Privy Councillor, and Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary to His Majesty the King of the French;

And His Majesty the King of the French, Jean de Dieu Soult, Duke of Dalmatia, Marshal and Peer of France, Grand Cross of His Royal Order of the Legion of Honour, &c., &c., &c., His Minister and Secretary of State for the Department of Foreign Affairs, President of the Council of Ministers;

Who, after having communicated to each other their respective Full Powers, found to be in due form, have agreed upon and concluded the following Articles:

ART. I. It is agreed, that the lines drawn between the points designated by the letters A, B, C, D, E, F, G, H, I, K, on the Chart annexed to the present Convention, and signed by the respective Plenipotentiaries, shall be acknowledged by the High Contracting Parties, as defining the limits between which and the French shore,

the oyster fishery shall be reserved exclusively to French subjects; and these lines are as follows, that is to say:

The 1st line runs from the point A, 3 miles from low water mark, (*Point Meinga*, bearing South) to the point B, of which the landmarks are *Agon Tower*, on with the *clump of trees* upon *Mount Huchon*; and the summit of *Gros Mont* in a line with the signal post on *Grand Isle*.

* * * * *

II. The oyster fishery within 3 miles of the Island of Jersey, calculated from low water mark, shall be reserved exclusively to British subjects.

III. The oyster fishery outside of the limits within which that fishery is exclusively reserved to British and French subjects respectively, as stipulated in the preceding Articles, shall be common to the subjects of both countries.

IV. Between sunset and the ensuing sunrise, the subjects of both countries, respectively, shall be prohibited from dredging for oysters between the coast of Jersey and the coast of France, from *Cape Carteret* to *Point Meinga*.

* * * * *

VII. The right of shelter in the Islands of Chaussey shall be granted to English fishermen on account of damage, or of evident bad weather.

VIII. Whenever the fishing-boats of either of the two nations shall be carried within the limits established for the fishery of the other country, by contrary winds, by strong tides, or by any other cause independent of the will of the master and crew; or whenever they shall have passed within those limits in working back to regain their fishing ground, the masters shall be bound immediately to hoist a blue flag of two feet long, and three feet broad, and to keep that flag at the mast-head, so long as they shall remain within the said limits.

The cruisers of each nation shall exercise their judgment as to the causes of such trespassings; and when they shall be satisfied that the said fishing boats have neither dredged nor fished within the limits above-mentioned, the aforesaid cruisers shall not detain either the boats or the crews, nor use any measures of severity towards the latter.

IX. The subjects of Her Britannic Majesty, shall enjoy the exclusive right of fishery within the distance of 3 miles from low water mark, along the whole extent of the coasts of the British Islands; and the subjects of the King of the French shall enjoy the exclusive right of fishery within the distance of 3 miles from low water mark, along the whole extent of the coasts of France; it being understood, that upon that part of the coast of France which lies between *Cape Carteret* and *Point Meinga*, French subjects shall enjoy the exclusive right of all kinds of fishery within the limits assigned in Article I. of this Convention, for the French oyster fishery.

It is equally agreed, that the distance of 3 miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays, the mouths of which do not exceed 10 miles in width, be measured from a straight line drawn from headland to headland.

X. It is agreed and understood, that the miles mentioned in the present Convention, are geographical miles, whereof 60 make a degree of latitude.

XI. With a view to prevent the collisions which now from time to time take place on the seas lying between the coasts of Great Britain and of France, between the trawlers and the line and long net fishers of the two countries, the High Contracting Parties agree to appoint, within 2 months after the exchange of the ratifications of the present Convention, a Commission consisting of an equal number of individuals of each nation, who shall prepare a set of regulations for the guidance of the fishermen of the 2 countries in the seas above-mentioned.

The regulations so drawn up, shall be submitted by the said Commissioners to the two Governments respectively, for approval and confirmation: And the High Contracting Parties engage to propose to the Legislatures of their respective countries, such measures as may be necessary for the purpose of carrying into effect the regulations which may be thus approved and confirmed.

XII. The present Convention shall be ratified, and the ratifications shall be exchanged within 6 weeks from the date hereof.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 2nd day of August, in the year of our Lord, 1839.

[L. S.]

GRANVILLE,

[L. S.]

MAL. DUC DE DALMATIE.

REGULATIONS ADOPTED PURSUANT TO TREATY OF AUGUST 2, 1839.

Regulations between Great Britain and France, for the guidance of British and French Fishermen, in the Seas lying between the Coasts of the Two Countries. London, 24th May, 1843.

The Undersigned, namely:

On the part of the United Kingdom of Great Britain and Ireland, Anthony Perrier, Esquire, Her Britannic Majesty's Consul for the Departments of Finistere, Morbihan and Cotes du Nord, in France.

And on the part of the Kingdom of France, Francois Lange, Knight of the Royal Order of the Legion of Honour, and Commissary of Marine of the first class;

Duly appointed and authorized by their respective Governments to act as Commissioners for the purpose of preparing a Set of Regulations for the guidance of the Fishermen of the 2 countries, in the seas lying between the coasts of the United Kingdom, and those of the Kingdom of France, in conformity with Article XI. of the Convention between Great Britain and France, signed at Paris on the 2nd August, 1839.

Have agreed upon the following Articles, which they submit to their respective Governments for approval and confirmation:

ART. I. British and French subjects fishing in the seas lying between the coasts of the United Kingdom of Great Britain and Ireland, and those of the Kingdom of France, shall conform to the following regulations.

II. The limits, within which the general right of fishery is exclusively reserved to the subjects of the 2 Kingdoms respectively are fixed, (with the exception of those in Granville Bay) at 3 miles' distance from low water mark.

With respect to bays, the mouths of which do not exceed 10 miles in width, the 3 mile distance is measured from a straight line drawn from headland to headland.

III. The miles mentioned in the present regulations are geographical miles, of which 60 make a degree of latitude.

* * * * *

V. It is forbidden to British fishermen to set their nets, or to fish in any manner whatsoever, within the French limits; and it is equally forbidden to French fishermen to set their nets, or to fish in any manner whatsoever, within the British limits.

* * * * *

XVI. Trawl fishing may be carried on, during all seasons, in the seas lying between the fishery limits which have been fixed for the 2 countries.

XVII. Trawls shall be made with nets, the meshes of which shall be at least $1\frac{3}{4}$ inch (45 millimetres French) square, from knot to knot, along the line.

XVIII. The length of the wooden yard, or beam, to which the upper part of the mouth of each trawl net shall be fastened, shall not exceed 38 feet (11 metres 500 millimetres French).

XIX. The under part of the trawl net, to a length of 10 feet (3 metres French) from its extremity, may be strengthened by rubbing pieces made of old nets; but these rubbing pieces shall be so fastened, that they shall not cross or narrow the meshes of the trawl net, which must always remain, at least, $1\frac{3}{4}$ inch (45 millimetres French) from knot to knot, along the line, open and unobstructed.

XX. The size of the meshes of any supplementary nets which may be added to trawls, shall be at least 2 inches (50 millimetres French) square from knot to knot, along the line.

* * * * *

XXIV. Trawl fishing is forbidden in all places where there are boats engaged in herring or mackerel drift-net fishing.

XXV. Trawl boats shall always keep at a distance, of at least 3 miles, from all boats fishing for herrings or mackerel with drift nets.

XXVI. Whenever herring or mackerel boats shall commence drift-net fishing in any place whatever, the trawl boats which may be already fishing in such place, shall depart therefrom, and shall keep at a distance, of at least 3 miles, from the said drift-net herring or mackerel boats.

XXVII. Herring fishing is free all the year round.

XXVIII. The meshes of all nets used for herring fishing, shall not be less than 1 inch (25 millimetres French) square, from knot to knot, along the line.

XXIX. Whenever decked herring boats and undecked herring boats shall commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats, except they should prefer going to leeward, to a distance of at least half a mile, to shoot their nets.

XXX. The decked boats, on their part, shall shoot their nets to leeward of the undecked boats, unless they prefer going to windward, to a distance of at least half a mile, to shoot their nets.

XXXI. When decked boats shall arrive on grounds where fishing is already begun by other boats, amongst which shall be undecked boats, the decked boats so arriving shall shoot their nets to leeward

of the undecked boats, except they should prefer going to windward, to a distance of at least half a mile, to shoot their nets.

XXXII. When undecked boats shall arrive on grounds where fishing is already begun by other boats, amongst which shall be decked boats, the undecked boats so arriving shall shoot their nets to windward of the decked boats, except they prefer going to leeward, to a distance of at least half a mile, to shoot their nets.

XXXIII. If, however, it should happen that the spot where fishing is going on, and, consequently, where the herrings are, should be so near to the fishery limits of one of the two countries, that the boats of the other country would, by observing the above-mentioned regulations, be prevented from taking part in the fishery, the said boats of the other country shall be at liberty to shoot their nets at a less distance than that prescribed in the preceding Articles for decked and undecked boats; but such fishermen may take advantage of this permission, shall be responsible for any damage or losses which their drifting may cause to the other boats.

XXXIV. Fishermen of the one country shall not avail themselves of the circumstances mentioned in the preceding Article, nor of any other circumstances whatsoever, to shoot their nets within the fishery limits of the other country.

* * * * *

XXXVI. Mackerel fishing is free all the year round.

XXXVII. The meshes of all nets used for mackerel fishing shall not be less than $1\frac{1}{2}$ inch (30 millimetres French) square, from knot to knot along the line.

XXXVIII. It is forbidden to all fishermen to load the lower parts of mackerel drift nets with leads or stones.

XXXIX. Boats going to fish for mackerel with drift nets are required, when they shall arrive on the fishing ground, to lower all sails to show that they have taken their berths.

XL. The boats mentioned in the preceding Article shall keep three-quarters of a mile at least apart from one another, when they shoot their nets.

* * * * *

XLV. Oyster fishing shall open on the 1st of September, and shall close on the 30th of April.

XLVI. From the 1st of May to the 31st of August, no boat shall have on board any dredge, or other implement whatsoever for catching oysters.

XLVII. It is forbidden to dredge for oysters between sunset and sunrise.

XLVIII. The fishermen shall cull the oysters on the fishing ground, and shall immediately throw back into the sea all oysters less than $2\frac{1}{2}$ inches (6 centimetres French), in the greatest diameter of the shell, and also all sand, gravel, and fragments of shells.

XLIX. It is forbidden to throw into the sea, on oyster fishing grounds, the ballast of boats, or any other thing whatsoever which might be detrimental to the oyster fishery.

* * * * *

LXIV. Infractions of regulations concerning the placing of boats, the distances to be observed, the prohibition of certain fisheries by day or night, or during certain periods of the year, and concerning

every other operation connected with the act of fishing; and more particularly as to circumstances likely to cause damage, shall be taken cognizance of by the cruizers of both nations, whichever may be the nation to which the fishermen guilty of such infractions may belong.

LXV. The commanders of cruizers of both countries shall exercise their judgment as to the causes of any transgressions committed by British or French fishing boats, in the seas where the said boats have the right to fish in common; and when the said commanders shall be satisfied of the fact of the transgression, they shall detain the boats having thus infringed the established regulations, and may take them into the port nearest to the scene of the occurrence, in order that the offence may be duly established, as well by comparing the declarations and counter declarations of parties interested, as by the testimony of those who may have witnessed the facts.

* * * * *

LXVII. Every fishing boat which shall have been taken into a foreign port, under either of the two preceding Articles, shall be sent back to her own country for trial, as soon as the transgression for which she may have been detained shall have been duly established. Neither the boat nor her crew shall, however, be detained in the foreign port more than 4 days.

* * * * *

LXIX. All transgressions of these regulations established for the protection of fisheries in the seas lying between the coasts of the British Islands and those of France shall, in both countries, be submitted to the exclusive jurisdiction of the tribunal, or the magistrates which shall be designated by law.

This tribunal or these magistrates shall also settle all differences and decide all contentions, whether arising between fishermen of the same country, or between fishermen of the 2 countries, and which cannot have been settled by the commanders of cruizers, or by the consular agents and the collectors of customs, or commissaries of marine, according to the country.

The above-mentioned jurisdiction shall not, however, be understood to apply to murder, felony, or any other grave crime; all such crimes remaining subject to the ordinary laws of each country respectively.

* * * * *

LXXXV. The fishing boats of the one country shall not approach nearer to any part of the coasts of the other country, than the limit of 3 miles, specified in Article IX of the Convention signed at Paris on the 2nd of August, 1839, except under the following circumstances:

1. When driven by stress of weather, or by evident damage, to seek shelter in the harbours, or within the fishery limits of the other country.

2. When carried within the limits established for the fishery of the other country, by contrary winds, by strong tides, or by any other cause independent of the will of the master and crew.

3. When obliged, by contrary winds or tide, to beat up in order to reach their fishing ground; and when, from the same cause of contrary wind or tide, they could not, if they remained outside, be able to hold on their course to their fishing ground.

4. When, during the herring fishing season, the herring fishing boats of the one country shall find it expedient to anchor under shelter of the coasts of the other country, in order to await a favourable opportunity for proceeding to their lawful fishery outside of the limits defined by Article IX of the Convention of August 2, 1839.

LXXXVI. Whenever, in any of the cases of exception specified in the preceding Article, the fishing boats of either nation shall have occasion to sail or anchor within the limits defined by the Convention of August 2nd, 1839, the masters of such boats shall immediately hoist a blue flag, 2 feet high and 3 feet long, and shall keep this flag flying at the mast head so long as they shall remain within the said limits. Consequently, this flag shall not be hauled down until the boats are actually outside of those limits.

These boats, when within the aforesaid limits, are not only prohibited from fishing themselves, but are also forbidden to send their small boats to fish, even outside of the limits in question. They must all (with the exception of herring boats which may be waiting, as they have the privilege of doing, for a favourable opportunity to proceed to their lawful fishery) return outside of the said limits, so soon as the causes shall have ceased which obliged them to come in under the cases of exception specified.

It is further agreed, conformably to the tenor of the present regulations, that the fishing boats of the one country shall not use the ports of the other country for the greater convenience of their fishery operations, either in proceeding from thence to their lawful fishery in the seas common to both, or in returning thereunto after fishing; it being understood, however, that this stipulation does not in any manner impair the right of putting into port, in the cases of exception specified in Article LXXXV.

LXXXVII. It is forbidden to herring drift-net fishing boats to shoot their nets earlier in the day than half an hour before sunset, except in places where it is customary to carry on this drift-net fishing by daylight.

LXXXVIII. Herring fishermen being within the fishery limits of either country, shall comply with the laws and regulations of the said country respecting the prohibition of fishing on the Sabbath Day.

LXXXIX. The commanders of the cruisers of each of the two countries, and all officers or other agents whatsoever appointed to superintend the fisheries, shall exercise their judgment as to the causes of any transgressions committed by the fishing boats of the other country, and when they shall be satisfied of the fact of the transgression, they shall detain, or cause to be detained, the boats having thus transgressed the preceding regulations (from Article LXXVI), and shall take them, or cause them to be taken, into port; where, upon clear proof of the transgression being brought by the detaining party before the competent tribunal or magistrates, the said boats so transgressing may be condemned to be kept for a period not exceeding 3 months, or to a fine not exceeding £10 (250 francs).

In testimony whereof the respective Commissioners have signed the present regulations, and have thereto affixed their seals.

Done in London the 24th day of May, in the year of our Lord, 1843.

[L. s.]
[L. s.]

ANTHONY PERRIER.
F. LANGE.

TREATY OF NOVEMBER 11, 1867, BETWEEN GREAT BRITAIN AND FRANCE.

Convention between Great Britain and France, relative to Fisheries in the Seas between Great Britain and France.^a Signed in the English and French Languages, at Paris, November 11, 1867.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, having charged a Mixed Commission with preparing a revision of the Convention of the 2nd of August, 1839, and of the Regulation of June 23, 1843, relative to the fisheries in the seas situated between Great Britain and France; and the members of that Commission having agreed upon certain arrangements which experience has shown would be useful, and which appear to them such as will advantageously modify and complete the former arrangements in the common interest of the fishermen of the two countries; their said Majesties have judged it expedient that the arrangements proposed by the said Commission should be sanctioned by a new Convention, and have for that purpose named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Richard Bickerton Pemell, Lord Lyons, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of the French;

And His Majesty the Emperor of the French, Leonel, Marquis de Moustier, Grand Cross of the Imperial Order of the Legion of Honour, &c., His Minister and Secretary of State for Foreign Affairs;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon and concluded the following Articles:

ART. I. British fishermen shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark, along the whole extent of the coasts of the British islands; and French fishermen shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coast of France; the only exception to this rule being that part of the coast of France which lies between Cape Carteret and Point Meinga.

The distance of 3 miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed 10 miles in width, be measured from a straight line drawn from headland to headland.

The miles mentioned in the present Convention are geographical miles, whereof 60 make a degree of latitude.

^a Ratifications exchanged at Paris, January 14, 1868.

II. It is agreed that the lines drawn between the points designated by the letters A, B, C, D, E, F, G, H, I, K, on the chart annexed to the present Convention, and signed by the respective Plenipotentiaries, shall be acknowledged by the High Contracting Parties, as defining from Point Meinga to Cape Carteret, the limits between which and the French shore the right of fishery shall be reserved exclusively to French fishermen, and these lines are as follows, that is to say:

The first line runs from the point A, 3 miles from low-water mark (Point Meinga bearing south) to the point B, of which the landmarks are Agon Tower, on with the clump of trees upon Mount Huchon, and the summit of Gros Mont in a line with the semaphore on Grand Isle.

* * * * *

III. The arrangements of the present Convention shall apply beyond the fishery limits of both countries, as defined by the preceding Articles, to the seas surrounding and adjoining Great Britain and Ireland, and adjoining the coasts of France between the frontiers of Belgium and Spain. The rules respecting oyster fishery shall, however, be observed only in the seas comprised within the limits hereinafter described.

* * * * *

IX. The fishermen of both countries shall, whenever required, exhibit their licences or other official papers, or their muster rolls, to the commanders of the fishery cruisers, and to all other persons of either country appointed to superintend the fisheries.

X. Fishing of all kinds, by whatever means and at all seasons, may be carried on in the seas lying beyond the fishery limits which have been fixed for the two countries, with the exception of that for oysters, as hereinafter expressed.

XI. From the 16th of June to the 31st of August inclusive, fishing for oysters is prohibited outside the fishery limits which have been fixed for the two countries, between a line drawn from the North Foreland Light to Dunkirk, and a line drawn from the Land's End to Ushant.

During the same period, and in the same part of the Channel, no boat shall have on board any oyster dredge, unless the same be tied up and sealed by the Customs authorities of one of the two countries in such a manner as to prevent its being made use of.

XII. No boat shall anchor between sunset and sunrise on grounds where drift-net fishing is actually going on.

This prohibition shall not apply to anchorings which may take place in consequence of accidents, or any other compulsory circumstances; but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally about 3 feet (one metre French) apart, and shall keep those lights up all the time the boat shall remain at anchor.

* * * * *

XV. Trawl boats shall not commence fishing at a less distance than 3 miles from any boat fishing with drift nets.

If trawl boats have already shot their nets, they must not come nearer to boats fishing with drift nets than the distance above-mentioned.

XVI. No boat fishing with drift nets shall shoot its nets so near to any other boat which has already shot its nets on the fishing ground, as to interfere with its operations.

XVII. No decked boat fishing with drift nets shall shoot its nets at a less distance than a quarter of a mile from any undecked boat which is already engaged in fishing.

XVIII. If the spot where fishing is going on should be so near to the fishery limits of one of the two countries that the boats of the other country would, by observing the regulations prescribed by Articles XV, XVI, and XVII preceding, be prevented from taking part in the fishery, such boats shall be at liberty to shoot their nets at a less distance than that so prescribed; but in such case the fishermen shall be responsible for any damage or losses which may be caused by the drifting of their boats.

XIX. Nets shall not be set or anchored in any place where drift net fishing is actually going on.

* * * * *

XXIII. The execution of the regulations concerning lights and signals, licenses, muster rolls, and official papers, the lettering and numbering of boats and implements of fishing, is placed, with respect to the fishermen of each of the two nations, under the exclusive superintendence of the cruisers and agents of their own nations.

Nevertheless, the commanders of the cruisers of one of the two nations shall acquaint the commanders of the cruisers of the other nation with any infractions of the above-mentioned regulations committed by the fishermen of such other nation which may come to their knowledge.

XXIV. All infractions of the regulations concerning the placing of boats on the fishing ground, the distances to be observed between them, the prohibition of oyster fishing during a portion of the year, and concerning every other operation connected with the act of fishing, and more particularly concerning circumstances likely to cause damage, shall be taken cognizance of by the cruisers of either nation, whichever may be the nation to which the fishermen guilty of such infractions may belong.

XXV. The commanders of cruisers of either country shall exercise their judgment as to the causes of any infractions brought to their knowledge, or as to damage arising from any cause whatever, committed by British or French fishing boats in the seas beyond the fishery limits which have been fixed for the two countries; they may detain the offending boats and take them into the port nearest the scene of the occurrence, in order that the infraction or damage may be there duly established, as well by comparing the declarations and counter-declarations of the parties interested, as by the testimony of those who were present.

XXVI. When the offence shall not be such as to require exemplary punishment, but shall nevertheless have caused damage to any fisherman, the commanders of the cruisers shall be at liberty, should the circumstances admit of it, to arbitrate at sea between the parties concerned. On refusal of the offenders to defer to their arbitration, the said commanders shall take both them and their boats into the nearest port to be dealt with as stated in the preceding Article.

* * * * *

XXIX. In both countries the competent court or magistrate shall be empowered to condemn to a fine of at least 8s. (10 francs), or to imprisonment for at least two days, persons who may infringe the regulations of the Convention concerning;

1. The close season for oysters, and illegal possession of dredges on board during that season;

2. The letters, numbers, and names to be placed on the boats, sails, nets, and buoys;

3. The licences or muster rolls;

4. The flags and lights to be carried by the boats;

5. The distances to be observed by the boats between each other;

6. The placing and anchoring of vessels and boats;

7. The placing and shooting of nets and the taking them up;

8. The clearing of nets;

9. The placing of buoys upon nets.

In case of repetition of the offence, the amount of fine or period of imprisonment may be doubled.

XXX. In all cases of assault committed, or of damage or loss inflicted at sea by fishermen of either country upon fishermen of the other country, the courts of the country to which the offenders belong shall condemn the latter to a fine of at least 8s. (10 francs), or to imprisonment for at least two days. They may, moreover, condemn the offenders to pay adequate compensation for the injury.

XXXI. Fishing boats of either of the two countries shall be admitted to sell their fish in such ports of the country as may be designated for that purpose, on condition that they conform to the regulations usually agreed upon. Those regulations, together with a list of the ports, are annexed to the present Convention; but without prejudice to the opening by either country of any additional ports.

XXXII. The fishing boats of the one country shall not enter within the fishery limits fixed for the other country, except under the following circumstances:

1. When driven by stress of weather or by evident damage;

2. When carried in by contrary winds, by strong tides, or by any other cause beyond the control of the master and crew;

3. When obliged by contrary winds or tides to beat up in order to reach their fishing ground; and when from the same cause of contrary wind or tide they could not, if they remained outside, be able to hold on their course to their fishing ground;

4. When during the herring fishing season the herring boats of the one country shall find it necessary to anchor under shelter of the coasts of the other country, in order to await the opportunity for proceeding to their fishing ground;

5. When proceeding to any of the ports of the other country open to them for the sale of fish, in accordance with the preceding Article; but in such case they shall never have oyster dredges on board.

* * * * *

XXXIV. The commanders of cruisers may authorize boats belonging to their own country to cross the exclusive fishery limits of the other country, whenever the weather is so threatening as to compel them to seek shelter.

* * * * *

XXXVI. The commanders of the cruisers of each of the two countries, and all officers or other agents appointed to superintend fisheries, shall exercise their judgment as to infractions of the regulations with regard to the fishery limits; and when they shall be satisfied of the fact of the infraction, they may detain the boats of the offenders, or cause them to be detained, and may take them, or cause them to be taken, into port, where, upon clear proof of the offence, such boats may be condemned by the competent court or magistrate to a fine not exceeding £10 (250 francs). In default of payment, such boats may be detained for a period not exceeding 3 months.

In case of repetition of the offence, the fine may be doubled.

XXXVII. The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as speedily and as summarily as the laws in force will permit.

XXXVIII. The terms "British Islands" and "United Kingdom," employed in this Convention, shall include the Islands of Jersey, Guernsey, Alderney, Sark, and Man, with their dependencies.

XXXIX. Her Britannic Majesty engages to recommend to Parliament to pass an Act to enable her to carry into execution such of the arrangements contained in the present Convention as require legislative sanction. When such an Act shall have been passed, the Convention shall come into operation from and after a day to be then fixed upon by the two High Contracting Parties. Due notice shall be given in each country, by the Government of that country, of the day which may be so fixed upon.

XL. The Convention shall continue in force for 10 years from the day on which it may come into operation, and if neither party shall, 12 months before the expiration of the said period of 10 years, give notice of its intention to terminate its operation, the Convention shall continue in force one year longer, and so on from year to year, until the expiration of one year's notice from either party for its termination.

The High Contracting Parties, however, reserve to themselves the power to make, by mutual consent, any modification in the Convention which experience shall have shown to be desirable, provided it is not inconsistent with the principles on which it is based.

XLI. The Convention concluded between the High Contracting Parties on the 2nd of August, 1839, and the Regulations of the 23rd of June, 1843, shall continue in force until the day when, as provided in Article XXXIX, the present Convention shall come into operation, and shall then altogether cease and determine.

XLII. The present Convention shall be ratified, and the ratifications shall be exchanged as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November, in the year of our Lord, 1867.

[L. S.]

LYONS

[L. S.]

MOUSTIER.

ADDITIONAL ARTICLE.

It is agreed that Article XXXI of the Convention signed this day shall not come into operation until the two Contracting Parties shall have come to a further understanding on the subject. Due notice shall be given of the day that may be fixed upon for its coming into operation.

The present Additional Article shall have the same force and validity as if it were inserted, word for word, in the Convention signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time as those of the Convention.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Paris, the 11th of November, in the year of our Lord, 1867.

[L. S.]
[L. S.]

LYONS
MOUSTIER.

[Annex.]

Declaration annexed to the Convention of November 11, 1867.

The fishermen of each country shall not be allowed to land or discharge their fish in the other country except at places where there is a Custom House, and during office hours.

Immediately upon their arrival, and in all cases before they commence the discharge of their cargo, they shall present their muster-roll, or license, or official paper, to the proper officer of Customs, and shall pass an entry at the Custom-House, stating, as nearly as possible, the quantity of fish which they have on board.

If the master of a fishing-boat cannot write, the officer of Customs shall fill up for him the form required, and the master shall affix his mark thereto.

The Custom-House officers shall have the power to board and search the fishing boats of the other country in the manner directed by the Customs laws.

During their stay in the ports of the other country, the fishermen of either country shall, if required to do so by the Customs authorities, deposit in a warehouse or in the Custom-House, until their departure, all stores subject to duty, which shall not be necessary for their daily consumption. No charge shall be made for such warehousing.

The ports enumerated in the subjoined list, where there is a Custom-House establishment, are those that shall be open in each country to the fishermen of the other country. In case the Customs establishment at any of those ports should be abolished, notice thereof shall be given to the Government of the other country.

NORTH SEA FISHERIES CONVENTION, 1882.

Convention between Her Britannic Majesty, the German Emperor, King of Prussia, the King of the Belgians, the King of Denmark, the President of the French Republic, and the King of the Netherlands, for regulating the police of the North Sea fisheries.

[Signed at The Hague, May 6, 1882.]

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; His Majesty the King of Denmark; the President of the French Republic; and His Majesty the King of the Netherlands, having recognized the necessity of regulating the police of the fisheries in the North Sea, outside territorial waters, have resolved to conclude for this purpose a convention, and have named their plenipotentiaries as follows:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the honorable William Stuart, companion of the Most Honorable Order of the Bath, etc., her envoy extraordinary and minister plenipotentiary at The Hague; Charles Malcolm Kennedy, esq., companion of the Most Honorable Order of the Bath, etc., head of the commercial department of the foreign office; and Charles Cecil Trevor, esquire, barrister at law, assistant secretary to the Board of Trade, etc.;

His Majesty the German Emperor, King of Prussia, Veit Richard von Schmidthals, knight of the Order of the Red Eagle of the third class, and of the Order of St. John, etc., councilor of legation, his charge d'affaires at The Hague; and Peter Christian Kinch Donner, knight of the Order of the Red Eagle of the fourth class with the sword, and of the crown of the fourth class, etc., his councilor of state, captain in the navy, on the reserve;

His Majesty the King of the Belgians, the Baron d'Anethan, commander of the Order of Leopold, etc., his envoy extraordinary and minister plenipotentiary at The Hague; and M. Leopold Orban, commander of the Order of Leopold, etc., his envoy extraordinary and minister plenipotentiary, director-general of the political department in the ministry of foreign affairs;

His Majesty the King of Denmark, Carl Adolph Bruun, knight of the Order of the Danebrog, etc., captain in the navy;

The President of the French Republic, the Count Lefebvre de Behaine, commander of the national order of the Legion of Honor, etc., envoy extraordinary and minister plenipotentiary of the French Republic at The Hague; and M. Gustave Emile Mancel, officer of the national order of the Legion of Honor, etc., commissary of marine;

His Majesty the King of the Netherlands, the Jonkheer Willem Frederik Rochussen, commander of the Order of the Lion of the Netherlands, etc., president of the committee for sea fisheries:

Who, after having communicated the one to the other their full power, found in good and due form, have agreed upon the following articles:

ARTICLE I.

The provisions of the present convention, the object of which is to regulate the police of the fisheries in the North Sea, outside territorial waters, shall apply to the subjects of the high contracting parties.

ARTICLE II.

The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.

As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay in the part nearest the entrance, at the first point where the width does not exceed 10 miles.

The present article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the powers to whom the shore belongs.

ARTICLE III.

The miles mentioned in the preceding article are geographical miles, whereof 60 make a degree of latitude.

* * * * *

ARTICLE XXXIX.

The present convention shall be brought into force from and after a day to be agreed upon by the high contracting parties.

The convention shall continue in operation for five years from the above day; and, unless one of the high contracting parties shall, twelve months before the expiration of the said period of five years, give notice of intention to terminate its operation, shall continue in force one year longer, and so on from year to year. If, however, one of the signatory powers should give notice to terminate the convention, the same shall be maintained between the other contracting parties, unless they give a similar notice.

ADDITIONAL ARTICLE.

The Government of His Majesty the King of Sweden and Norway may adhere to the present convention, for Sweden and for Norway, either jointly or separately.

This adhesion shall be notified to the Netherlands Government, and by it to the other signatory powers,

In witness whereof the plenipotentiaries have signed the present convention, and have affixed thereto their seals.

Done at the Hague, in six copies, the 6th May, 1882.

[L. S.]
[L. S.]
[L. S.]
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[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]

W. STUART.
C. M. KENNEDY.
C. CECIL TREVOR.
V. SCHMIDTHALS.
CHR. DONNER.
B^{on}. A. D'ANETHAN.
LEOPOLD ORBAN.
C. BRUUN.
C^{te}. LEFEBVRE DE BEHAINE.
EM. MANCEL.
ROCHUSSEN.
E. N. RAHUSEN.

Protocol relating to deposit of instruments of ratification with the Netherlands Government.

[Translation.]

In conformity with the agreement arrived at between their respective Governments, the undersigned envoys extraordinary and ministers plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, His Majesty the German Emperor, King of Prussia, His Majesty the King of the Belgians, and the French Republic, met together this day at the office of the minister for foreign affairs at the Hague, in order to proceed with the undersigned minister for foreign affairs of His Majesty the King of the Netherlands, to the examination and deposit of the instruments of ratification of the convention signed at the Hague the 6th May, 1882, having for its object the regulation of the police of the fisheries in the North Sea, outside territorial waters.

The instruments of ratification having been produced, and the minister for foreign affairs of His Majesty the King of the Netherlands having produced the instrument of ratification of His Majesty the King of Denmark, which the minister for foreign affairs at Copenhagen had forwarded to him in a note dated the 11th June, 1883, as well as the instrument of ratification signed by His Majesty the King of the Netherlands, and the said instruments having been examined and found in good and due form, the documents were delivered to the minister for foreign affairs of His Majesty the King of the Netherlands, in order that they might remain deposited in the archives of the department for foreign affairs at the Hague, such deposit being in place of an exchange of the said instruments.

The undersigned, envoys extraordinary and ministers plenipotentiary, duly authorized by their respective Governments, and the undersigned, minister for foreign affairs of His Majesty the King of the Netherlands, equally authorized by His Majesty the King of the Netherlands, and by the Government of His Majesty the King of Denmark, have, moreover, mutually agreed that the convention shall be put into operation two months after the date of the present protocol.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at the Hague, the 15th day of March, in the year of grace 1884, in six copies, of which one shall be delivered to each of the six Governments.

[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]

W. STUART.
VON ALVENSLEBEN.
BON A. D'ANETHAN.
VAN DER DOES DE WILLEBOIS.
LOUIS LEGRAND.
VAN DER DOES DE WILLEBOIS.

Protocol of meeting held March 15, 1884, at the office of the Netherlands Minister for Foreign Affairs.

[Translation.]

The undersigned, envoys extraordinary and ministers plenipotentiary of His Majesty the German Emperor, King of Prussia, His Majesty the King of the Belgians, the French Republic, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the undersigned, minister for foreign affairs of His Majesty the King of the Netherlands, who is also authorized to represent the Government of the King of Denmark on this occasion, having met together at the office of the minister for foreign affairs at the Hague on the 15th March, 1884, for the purpose of depositing the instruments of ratification of the convention signed at the Hague the 6th May, 1882, having for its object the regulation of the police of the fisheries in the North Sea outside territorial waters, and in order to sign the protocol relative to said deposition, the envoy of France stated that, while adhering to the time agreed upon for putting the convention into operation, the Government of the Republic maintained the reserve contained in article 24 of the law of the 15th January, 1884, thus worded:

“The carrying into effect of the present law shall be provisionally suspended up to the time on which the other signatory powers of the convention of the 6th May, 1882, shall have promulgated the penalties stipulated in Article XXXV of the convention.”

The other undersigned have stated to him that they take note of this declaration.

VON ALVENSLEBEN
BARON D'ANETHAN
(For the Government of Denmark).
VAN DER DOES DE WILLEBOIS.
LOUIS LEGRAND
W. STUART
VAN DER DOES DE WILLEBOIS.

SECTION II
OF THE APPENDIX
OF THE
COUNTER CASE OF THE UNITED STATES

LEGISLATIVE ACTS, PROCLAMATIONS,
AND EXECUTIVE ORDERS



UNITED STATES.

STATUTES.

ACT OF AUGUST 5, 1854.

(10 Stat. L., c. 269)

An Act to carry into effect a Treaty between the United States and Great Britain, signed on the fifth day of June, eighteen hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain and the Provincial Parliaments of Canada, New Brunswick, Nova Scotia, and Prince Edward's Island, have passed laws on their part to give full effect to the provisions of the treaty between the United States and Great Britain, signed on the fifth of June last, he is hereby authorized to issue his proclamation, declaring that he has such evidence, and thereupon, from the date of such proclamation, the following articles, being the growth and produce of the said provinces of Canada, New Brunswick, Nova Scotia, and Prince Edward's Island; to wit:

Grain, flour, and breadstuffs of all kinds; animals of all kinds; fresh, smoked, and salted meats; cotton-wool; seeds and vegetables; undried fruits; dried fruits; fish of all kinds; products of fish and all other creatures living in the water; poultry; eggs; hides, furs, skins or tails undressed; stone or marble in its crude or unwrought state; slate; butter, cheese, tallow; lard; horns; manures; ores of metals of all kinds; coal; pitch, tar, turpentine; ashes; timber and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole or in part; fire-wood, plants, shrubs, and trees; pelts; wool; fish oil; rice; broom-corn and bark; gypsum, ground or unground; hewn or wrought or unwrought burr or grindstones; dye-stuffs; flax, hemp, and tow, unmanufactured; unmanufactured tobacco; rags;—

Shall be introduced in to the United States free of duty so long as the said treaty shall remain in force—subject, however, to be suspended in relation to the trade with Canada, on the condition mentioned in the fourth article of the said treaty; And all the other provisions of the said treaty shall go into effect, and be observed on the part of the United States.

SEC. 2. *And be it further enacted,* That whenever the island of Newfoundland shall give its consent to the application of the stipulations and provisions of the said treaty to that Province, and the Legislature thereof and the Imperial Parliament shall pass the necessary laws for that purpose, the above enumerated articles shall be admitted free of duty from that province in to the United States,

from and after the date of a proclamation by the President of the United States, declaring that he has satisfactory evidence that the said Province has consented, in a due and proper manner, to have the provisions of the treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained.

Approved, August 5, 1854.

ACT OF MARCH 1, 1873.

(17 Stat. L., c. 213.)

An Act to carry into Effect the Provisions of the Treaty between the United States and Great Britain signed in the City of Washington the eighth day of May, eighteen hundred and seventy-one, relating to the Fisheries.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever the President of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain, the Parliament of Canada, and the legislature of Prince Edward's Island have passed laws on their part to give full effect to the provisions of the treaty between the United States and Great Britain signed at the city of Washington on the eighth day of May, eighteen hundred and seventy-one, as contained in articles eighteenth to twenty-fifth, inclusive, and article thirtieth, of said treaty, he is hereby authorized to issue his proclamation declaring that he has such evidence, and thereupon, from the date of such proclamation, and so long as the said articles eighteenth to twenty-fifth, inclusive, and article thirtieth of said treaty shall remain in force, according to the terms and conditions of article thirty-third of said treaty, all fish-oil and fish of all kinds, (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the Dominion of Canada or of Prince Edward's Island, shall be admitted into the United States free of duty.

SECTION 2. That whenever the colony of Newfoundland shall give its consent to the application of the stipulations and provisions of the said articles eighteenth to twenty-fifth of said treaty, inclusive, to that colony, and the legislature thereof, and the Imperial Parliament shall pass the necessary laws for that purpose, the above enumerated articles, being the produce of the fisheries of the colony of Newfoundland, shall be admitted into the United States free of duty, from and after the date of a proclamation by the President of the United States, declaring that he has satisfactory evidence that the said colony of Newfoundland has consented, in a due and proper manner, to have the provisions of the said articles eighteenth to twenty-fifth, inclusive, of the said treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained, and shall be so admitted free of duty, so long as the said articles eighteenth to twenty-fifth, inclusive, and article thirtieth, of said treaty, shall remain in force, according to the terms and conditions of article thirty-third of said treaty.

SEC. 3. That from the date of the President's proclamation authorized by the first section of this act, and so long as the articles eighteenth to twenty-fifth, inclusive, and article thirtieth of said treaty, shall remain in force, according to the terms and conditions of article thirty-third of said treaty, all goods, wares or merchandize arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been, or may, from time to time, be specially designated by the President of the United States and destined for Her Britannic Majesty's possessions in North America, may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Secretary of the Treasury may, from time to time, prescribe; and under like rules, regulations, and conditions, goods, wares, or merchandise, may be conveyed in transit, without the payment of duties, from such possessions, through the territory of the United States, for export from the said ports of the United States.

SEC. 4. That from the date of the President's proclamation, authorized by the first section of this act, and so long as articles eighteenth to twenty-fifth, inclusive, and article thirtieth of said treaty, shall remain in force, according to the terms and conditions of article thirty-third of said treaty, all subjects of Her Britannic Majesty may carry in British vessels, without payment of duty, goods, wares, or merchandise from one port or place within the territory of the United States, upon the Saint Lawrence, the great lakes, and the rivers connecting the same, to another port or place within the territory of the United States, as aforesaid: *Provided*, That a portion of such transportation is made through the Dominion of Canada by land-carriage and in bond, under such rules and regulations as may be agreed upon between the government of Her Britannic Majesty and the government of the United States: *And provided further*, That the President of the United States may, by proclamation, suspend the right of carrying provided for by this section, in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals in the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in article twenty-seventh of said treaty: *And provided further*, That in case any export or other duty continues to be levied after the sixteenth day of June eighteen hundred and seventy-two, on lumber or timber of any kind cut on that portion of the American territory, in the State of Maine, watered by the river Saint John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the province of New Brunswick, that then, and in that case, the President of the United States may, by proclamation, suspend all rights of carrying provided for by this section for such period as such export or other duty may be levied.

SEC. 5. That this act shall not take effect until the first day of July, eighteen hundred and seventy-three, and shall not apply to any article of merchandise therein mentioned which shall be held in bond on that day by the customs officers of the United States.

Approved, *March 1, 1873.*

PROCLAMATIONS.

PROCLAMATION OF JULY 1, 1873, RELATIVE TO THE TREATY OF
MAY 8, 1871.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas by the Thirty-third Article of a Treaty concluded at Washington on the 8th day of May, 1871, between the United States and Her Britannic Majesty, it was provided that "Articles XVIII to XXV inclusive, and Article XXX of this Treaty shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other;"

And whereas by the first section of an Act entitled "An act to carry into effect the provisions of the Treaty between the United States and Great Britain signed in the city of Washington the eighth day of May, eighteen hundred and seventy-one, relating to the fisheries," it is provided "that whenever the President of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain, the Parliament of Canada, and the Legislature of Prince Edward's Island, have passed laws on their part to give full effect to the provisions of the Treaty between the United States and Great Britain signed at the City of Washington on the eighth day of May, eighteen hundred and seventy-one, as contained in Articles eighteenth to twenty-fifth, inclusive, and Article thirtieth of said Treaty, he is hereby authorized to issue his Proclamation declaring that he has such evidence."

And whereas the Secretary of State of the United States and Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary at Washington have recorded in a Protocol a conference held by them at the Department of State in Washington, on the 7th day of June, 1873, in the following language:

Protocol of a conference held at Washington, June 7, 1873, setting the time at which articles 18 to 25, and article 30 of the treaty of May 8, 1871, should go into effect, with respect to Prince Edwards Island.

Whereas it is provided by Article XXXIII of the treaty between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, signed at Washington on the 8th of May, 1871, as follows:

"ARTICLE XXXIII.

"The foregoing articles, XVIII to XXV, inclusive, and Article XXX of this Treaty shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by

the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said articles shall remain in force for the period of ten years from the date at which they may come into operation, and further until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward."

And whereas, in accordance with the stipulations of the above recited Article, an Act was passed by the Imperial Parliament of Great Britain in the 35th and 36th years of the reign of Queen Victoria, intituled "An Act to carry into effect a Treaty between Her Majesty and the United States of America."

And whereas an Act was passed by the Senate and House of Commons of Canada in the fifth session of the First Parliament, held in the thirty-fifth year of Her Majesty's Reign, and assented to in Her Majesty's name, by the Governor General on the Fourteenth day of June, 1872, intituled "An Act relating to the Treaty of Washington 1871."

And whereas an Act was passed by the Legislature of Prince Edward's Island and assented to by the Lieutenant-Governor of that Colony on the 29th day of June, 1872, intituled "An Act relating to the Treaty of Washington, 1871."

And whereas an Act was passed by the Senate and House of Representatives of the United States of America in Congress assembled, and approved on the first day of March, 1873, by the President of the United States, intituled "An Act to carry into effect the provisions of the Treaty between the United States and Great Britain, signed in the City of Washington, the eighth day of May, eighteen hundred and seventy-one, relating to Fisheries."

The undersigned Hamilton Fish, Secretary of State, of the United States, and the Right Honourable Sir Edward Thornton, one of Her Majesty's Most Honourable Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America, duly authorized for this purpose by their respective Governments, having met together at Washington and having found that the laws required to carry the Articles XVIII to XXV inclusive, and Article XXX of the Treaty aforesaid into operation have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one part, and by the Congress of the United States on the other, hereby declare that Articles XVIII to XXV inclusive, and Article XXX of the Treaty between Her Britannic Majesty and the United States of America on the 8th of May, 1871, will take effect on the First day of July next.

In witness whereof the undersigned have signed this Protocol and have hereunto affixed their seals.

Done in duplicate at Washington, this Seventh day of June, 1873.

[SEAL.]

HAMILTON FISH.

[SEAL.]

EDWD. THORNTON.

Now, therefore, I, Ulysses S. Grant, President of the United States of America, in pursuance of the premises, do hereby declare that I have received satisfactory evidence that the Imperial Parliament of Great Britain, the Parliament of Canada, and the Legislature of Prince Edward's Island, have passed laws on their part to give full effect to the provisions of the said Treaty as contained in Articles Eighteenth to Twenty-fifth, inclusive, and Article Thirtieth of said Treaty.

In testimony whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this first day of July, in the year of our Lord, one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh.

[SEAL.]

U. S. GRANT.

By the President

HAMILTON FISH,

Secretary of State.

**PROCLAMATION OF MAY 29, 1874, RELATIVE TO THE TREATY OF
MAY 8, 1871.**

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas by the thirty-third article of a treaty concluded at Washington on the 8th day of May, 1871, between the United States and Her Britannic Majesty, it was provided that "Articles XVIII to XXV, inclusive, and Article XXX of this treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island, on the one hand, and by the Congress of the United States on the other;"

And whereas it is provided by Article XXXII of the treaty aforesaid "that the provisions and stipulations of Articles XVIII to XXV of this treaty, inclusive, shall extend to the colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the colony of Newfoundland in their laws enacted for carrying the foregoing articles into effect, then this article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair any other articles of this treaty;"

And whereas by the second section of an act, entitled "An Act to carry into effect the provisions of the treaty between the United States and Great Britain, signed in the city of Washington the 8th day of May, eighteen hundred and seventy-one, relating to the fisheries," it is provided:

"That whenever the colony of Newfoundland shall give its consent to the application of the stipulations and provisions of the said articles eighteenth to twenty-fifth of said treaty, inclusive, to that colony, and the Legislature thereof and the Imperial Parliament

shall pass the necessary laws for that purpose, the above enumerated articles, being the produce of the fisheries of the colony of Newfoundland, shall be admitted into the United States free of duty, from and after the date of a proclamation by the President of the United States, declaring that he has satisfactory evidence that the said colony of Newfoundland has consented, in a due and proper manner, to have the provisions of the said articles eighteenth to twenty-fifth, inclusive, of the said treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained, and shall be so admitted free of duty so long as the said articles eighteenth to twenty-fifth, inclusive, and article thirtieth of said treaty, shall remain in force, according to the terms and conditions of article thirty-third of said treaty:"

And whereas the Secretary of State of the United States and Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary at Washington have recorded in a protocol of a conference held by them at the Department of State in Washington on the 28th day of May, 1874, in the following language:

Protocol of a Conference between Great Britain and The United States, relative to the Newfoundland Fisheries. Washington, May 28, 1874.

Whereas it is provided by Article XXXII of the Treaty between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America, signed at Washington on the 8th of May, 1871, as follows:

ART. XXXII. It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

And whereas an Act was passed by the Governor, Legislative Council, and Assembly of Newfoundland in Legislative Session convened in the 37th year of Her Majesty's reign, and assented to by Her Majesty on the 12th day of May, 1874, intituled "An Act to carry into effect the provisions of the Treaty of Washington so far as they relate to this colony."

And whereas an Act was passed by the Senate and House of Representatives of the United States of America in Congress assembled, and approved on the 1st day of March, 1873, by the President of the United States, entitled "An Act to carry into effect the provisions of the Treaty between The United States and Great Britain, signed in the City of Washington the 8th of May, 1871, relating to fisheries," by which Act it is provided:

§ 2. That whenever the Colony of Newfoundland shall give its consent to the application of the stipulations and provisions of the said Articles XVIII to XXV of the said Treaty, inclusive, to that colony, and the Legislature thereof, and the Imperial Parliament

shall pass the necessary laws for that purpose, the above enumerated articles, being the produce of the fisheries of the Colony of Newfoundland, shall be admitted into the United States free of duty from and after the date of a Proclamation by the President of the United States, declaring that he has satisfactory evidence that the said Colony of Newfoundland has consented, in a due and proper manner, to have the provisions of the said Articles XVIII to XXV, inclusive, of the said Treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained, and shall be so admitted free of duty, so long as the said Articles XVIII to XXV, inclusive, and Article XXX of said Treaty shall remain in force, according to the terms and conditions of Article XXXIII of said Treaty.

The Undersigned, the Right Honourable Sir Edward Thornton, one of Her Majesty's Most Honourable Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America, and Hamilton Fish, Secretary of State of The United States, duly authorized for this purpose by their respective Governments, having met together at Washington, and having found that the laws required to carry the Articles XVIII to XXV, inclusive, and Articles XXX and XXXII of the Treaty aforesaid into operation, have been passed by the Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island, and the Legislature of Newfoundland, on the one part, and by the Congress of the United States on the other, hereby declare that Articles XVIII to XXV of the Treaty between Her Britannic Majesty and the United States of America, shall take effect in accordance with Article XXXIII of said Treaty between Her Majesty's subjects in the Colony of Newfoundland and the citizens of the United States of America on the 1st day of June next.

In witness whereof the Undersigned have signed this Protocol, and have hereunto affixed their seals.

Done in duplicate, at Washington, this 28th day of May, 1874.

[L. s.]	EDWARD THORNTON.
[L. s.]	HAMILTON FISH.

Now, therefore, I, Ulysses S. Grant, President of the United States of America, in pursuance of the premises, do hereby declare that I have received satisfactory evidence that the Imperial Parliament of Great Britain and the Legislature of Newfoundland have passed laws on their part to give full effect to the provisions of the said treaty, as contained in articles eighteenth to twenty-fifth, inclusive, and article thirtieth of said treaty.

In testimony whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-eighth.

[SEAL.]

By the President,

HAMILTON FISH,

Secretary of State.

U. S. GRANT.

GREAT BRITAIN.

STATUTES.

ACT OF MARCH 30, 1809.

(49 Geo. III, Cap. 27.)

An Act for establishing Courts of Judicature in the Island of *Newfoundland* and the Islands adjacent; and for reannexing Part of the Coast of *Labrador* and the Islands lying on the said Coast to the Government of Newfoundland.

(30th March, 1809.)

XIV. AND whereas His Majesty, by his Proclamation of the 7th day of October, 1763, was pleased to declare that he had put the coast of Labrador from the River St. John to Hudson's Straits, with the Islands of Anticosti and Madelaine, and all other smaller islands lying on the said coast, under the care and inspection of the Governor of Newfoundland; and whereas, by an Act passed in the 14th year of the reign of His present Majesty, entitled "An Act for making more effectual provision for the government of the Province of Quebec in North America," all such territories, islands, and countries as since the 10th day of February, 1763, had been made part of the Government of Newfoundland, were, during His Majesty's pleasure, annexed to and made part of the Province of Quebec, as created by the said Proclamation; and whereas, in pursuance of an Act passed in the 31st year of His present Majesty's reign, entitled "An Act to repeal certain parts of an Act passed in the 14th year of His Majesty's reign, entitled 'An Act for making more effectual provision for the government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" the said Province of Quebec was divided into two Provinces of Upper and Lower Canada, the latter including the parts of the coast of Labrador and the said islands so formerly annexed to the Government of Newfoundland; and whereas it is expedient that the said coast of Labrador and the adjacent islands (except the Islands of Madelaine) should be reannexed to the Government of Newfoundland:

Be it therefore enacted, that such parts of the coast of Labrador from the River St. John to Hudson's Straits, and the said Island of Anticosti, and all other smaller islands, so annexed to the Government of Newfoundland by the said Proclamation of the 7th day of October, 1763 (except the said Islands of Madelaine), shall be separated from the said Government of Lower Canada, and be again re-annexed to the Government of Newfoundland. Anything in the said Act passed in the 31st year of His present Majesty's reign or any other Act to the contrary notwithstanding.

ACT OF JUNE 24, 1822.

(3 Geo. IV Cap. 44.)

An Act to regulate the Trade between His Majesty's Possessions in *America* and the *West Indies*, and other Places in *America* and the *West Indies*.

(24th June 1822.)

Whereas divers Acts of Parliament have been from time to time passed, for regulating the Importation and Exportation of certain Articles into and from certain Territories, Islands and Ports, under the Dominion of His Majesty, in *America* and the *West Indies*; and it is expedient that the said several Acts should be repealed, and other Provisions made in lieu thereof: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, an Act passed in the Twenty eighth Year of the Reign of His late Majesty King *George the Third*, intituled *An Act for regulating the Trade between the Subjects of His Majesty's Colonies and Plantations in North America, and in the West India Islands, and the Countries belonging to the United States of America, and between His Majesty's said Subjects and the Foreign Islands in the West Indies*; also, an Act

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shall be and the same are hereby repealed.

* * * * *

III. And be it further enacted, That from and after the passing of this Act, it shall be lawful to import into any of the Ports enumerated in the Schedule annexed to this Act, marked (A.), from any Foreign Country on the Continent of *North* or *South America*, or from any Foreign Island in the *West Indies*, whether such Country or Island as aforesaid shall be under the Dominion of any Foreign European Sovereign or State, or otherwise, the Articles enumerated in the Schedule annexed to this Act marked (B.), either in *British* built Ships or Vessels owned and navigated according to Law, or in any Ship or Vessel *bona fide* the Built of and owned by the Inhabitants of any Country or Place belonging to or under the Dominion of the Sovereign or State of which the said Articles are the Growth, Produce or Manufacture, such Ship or Vessel being navigated with a Master and Three fourths of the Mariners at least belonging to such Country or Place; or in any *British* built Ship or Vessel which has been sold to and become the Property of the Subjects of any such Sovereign or State, such Ship or Vessel last mentioned being also navigated with a Master and Three fourths of the Mariners at least belonging to such Country or Place: Provided always, that no Articles enumerated in the said Schedule shall be imported in any Foreign Ship or Vessel, or in any *British* built Ship or Vessel so sold as aforesaid, unless shipped and brought directly from the Country or Place of which they are the Growth, Produce or Manufacture.

IV. And be it further enacted, That it shall be lawful to export in any *British* built Ship or Vessel owned and navigated according to Law, or in any Foreign Ship or Vessel as aforesaid, or in any

British built Ship or Vessel so sold as aforesaid, from any of the Ports enumerated in the Schedule annexed to this Act, marked (A.), and Article of the Growth, Produce or Manufacture of any of His Majesty's Dominions, or any other Article legally imported into the said Ports, provided, that the said Articles when exported in any such Foreign Ship or Vessel, or in any *British* built Ship or Vessel so sold as aforesaid, shall be exported direct to the Country or State in *America* or the *West Indies* to which such Ship or Vessel belongs as aforesaid, and before the Shipment thereof, Security by Bond shall be given to His Majesty, His Heirs and Successors, in a Penalty equal to Half the Value of the said Articles; such Bond to be entered into by the Master and Exporter before the Collector or other Chief Officer of the Customs of such Colony, Plantation or Island, for the due landing the said Articles at the Port or Ports for which entered, and for producing a Certificate thereof within Twelve Months from the Date of such Bond, under the Hand and Seal of the *British* Consul or Vice Consul resident at the Port or Place where the said Articles shall have been landed; but in case there shall not be any such Consul or Vice Consul there resident, such Certificate to be under the Hand and Seal of the Chief Magistrate, or under the Hand and Seal of Two known *British* Merchants residing at such Port or Place; but such Bond may be discharged by Proof on Oath by credible Persons, that the said Articles were taken by Enemies, or perished in the Seas: Provided always, that nothing herein contained shall be construed to permit or allow the Exportation of any Arms or Naval Stores, unless a Licence shall have been obtained for that Purpose from His Majesty's Secretary of State; and in case any such Articles shall be shipped or waterborne for the Purpose of being exported contrary to this Act, the same shall be forfeited, and shall and may be seized and prosecuted as hereinafter directed.

* * * * *

VI. And be it further enacted, That in case any Doubt shall arise, whether any Goods, Wares or Merchandize intended to be exported in any Foreign Ship or Vessel, under the Authority of this Act, had been legally imported into such Port, the Legality of such Importation shall be made to appear to the Satisfaction of the Collector and Comptroller, or other Principal Officer of the Customs of such Port, before such Goods, Wares and Merchandize shall be suffered to be shipped for Exportation.

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'XV. And Whereas it is the Intention and Meaning of this Act, that the Privileges hereby granted to Foreign Ships and Vessels shall be confined to the Ships and Vessels of such Countries only as give the like Privileges to *British* Ships and Vessels in their Ports in *America* and the *West Indies*;' Be it therefor enacted, That it shall be lawful for His Majesty, His Heirs and Successors, by Order in Council from time to time, when and as often as the same shall be judged expedient, to prohibit Trade and Intercourse under the Authority of this Act, with any Country or Island in *America* or the *West Indies*, if it shall appear to His Majesty that the Privileges granted by this Act to Foreign Ships and Vessels are not allowed to

British Ships and Vessels trading to and from any such Country or Island under the Provisions of this Act; and in case such Order of His Majesty in Council shall be issued, then during the time that such Order in Council shall be in force, none of the Provisions of this Act, either as respects the Laws herein repealed, or to any other Provisions of this Act, shall apply or be taken to apply to any Country or State, the Trade with which, under the Provisions of this Act, shall be prohibited by any such Order of His Majesty in Council; and if any Goods whatever shall be imported from or shipped for the Purpose of being exported to any such Country or Island in America or the West Indies, in any Foreign Ship or Vessel, after Trade and Interchange therewith shall have been prohibited by any such Order of His Majesty in Council, issued under the Authority of this Act, all such Goods, together with the Ship or Vessel in which the same shall have been imported, or in which the same shall have been shipped for the Purpose of being exported as aforesaid, shall be forfeited, with all her Guns, Furniture, Ammunition, Tackle and Apparel; and in every such case the same shall and may be seized by any Officer of His Majesty's Customs or Navy, authorized or empowered to make Seizures in cases of Forfeiture, and shall and may be prosecuted in manner as hereinafter directed.

XVI. And be it further enacted, That if His Majesty shall deem it expedient to extend the Provisions of this Act to any Port or Ports not enumerated in the Schedule marked (A.), it shall be lawful for His Majesty, by Order in Council, to extend the Provisions of this Act to such Port or Ports; and from and after the Day mentioned in such Order in Council, all the Privileges and Advantages of this Act, and all the Provisions, Penalties and Forfeitures therein contained, shall extend and be deemed and construed to extend to any such Port or Ports respectively, as fully as if the same had been inserted and enumerated in the said Schedule at the Time of passing this Act.

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SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A).

List of free ports.

Kingston, Savannah Le Mar, Montego Bay, Santa Lucia, Antonio
 Saint Ann, Falmouth, Maria, Morant Bay—Jamaica.
 Saint George—Grenada.
 Roseau—Dominica.
 Saint John's—Antigua.
 San Josef—Trinidad.
 Scarborough—Tobago.
 Road Harbour—Tortola.
 Nassau—New Providence.
 Pitt's Town—Crooked Island.
 Kingston—Saint Vincent.
 Port St. George & Port Hamilton—Bermuda.
 Any Port where there is a Custom House—Bahamas.
 Bridgetown—Barbadoes.

St. John's, St. Andrew's—New Brunswick.
 Halifax—Nova Scotia.
 Quebec—Canada.
 St. John's—Newfoundland.
 George Town—Demarara.
 New Amsterdam—Berbice.
 Castries—St. Lucia.
 Basseterre—St. Kitts.
 Charles Town—Nevis.
 Plymouth—Montserrat.

ACT OF JUNE 22, 1825.

(6 Geo. IV, Cap. 59.)

An Act to provide for the Extinction of Feudal and Seignioral Rights and Burthens on Lands held *a Titre de Fief* and *a Titre de Cens*, in the Province of Lower Canada; and for the gradual Conversion of those Tenures into the Tenure of Free and Common Soccage; and for other Purposes relating to the said Province.

(22nd June, 1825.)

* * * * *

IX. And whereas, under and by virtue of a certain Act passed in the 49th year of the reign of His late Majesty King George the Third, entitled "*An Act for establishing Courts of Judicature in the Island of Newfoundland and in the Islands adjacent, and for re-annexing part of Labrador and the Islands lying on the said coast to the Government of Newfoundland;*" and of the Act passed in the 5th year of the reign of His present Majesty, entitled "*An Act for the better Administration of Justice in Newfoundland, and for other purposes,*" the coast of Labrador, from the River St. John to Hudson's Straits, and the Island of Anticosti, and all the islands adjacent to the said coast (except the Islands of Madelaine) are annexed to and form part of the Government of Newfoundland, and it is expedient that certain parts of the said coast of Labrador should be re-annexed to and form part of the Province of Lower Canada:

Be it therefore enacted, that so much of the said coast as lies westward of a line to be drawn due north and south from the Bay or Harbour of Ance Sablon, inclusive, as far as the 52nd degree of north latitude, with the Island of Anticosti, and all other islands adjacent to such part as last aforesaid, of the coast of Labrador, shall be, and the same are hereby, re-annexed to and made a part of the said Province of Lower Canada, and shall henceforward be subject to the laws of the said Province, and to none other; and so much of the said recited Acts passed in the 49th year of the reign of His late Majesty King George the Third, and in the 5th year of the reign of His present Majesty, as relates to such part of the coast of Labrador as last aforesaid, and the said Island of Anticosti, and other adjacent islands shall be, and the same is hereby, repealed.

ACT OF JULY 13, 1868.

[31 & 32 Vict., cap. 45.]

Act of the British Parliament, to carry into effect a Convention between Her Majesty and the Emperor of the French concerning the Fisheries in the Seas adjoining the British Islands and France, and to amend the Laws relating to British Sea Fisheries.

[July 13, 1868.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.—PRELIMINARY.

1. This Act shall be divided into parts as follows:

Part I. Preliminary.

Part II. Sea Fishery Convention.

Part III. Oyster Fisheries.

Part IV. Legal Proceedings.

Part V. Miscellaneous.

2. This Act may be cited as The Sea Fisheries Act, 1868.

3. This Act shall (except as is in this Act expressly otherwise provided) come into force on such day as may be fixed by a notice in that behalf published in the London Gazette, which day is in this Act referred to as the commencement of this Act.

4. So much of this Act as relates to French subjects or French sea-fishing boats outside of the exclusive fishery limits of the British Islands, and as gives powers to French sea-fishery officers, shall, on the determination of the Convention set out in the first schedule to this Act, cease to apply to French subjects, boats, and officers; but, subject as aforesaid, this Act shall continue in force notwithstanding the determination of that Convention.

5. In this Act—

The term "Sea-Fish" does not include salmon, as defined by any Act relating to salmon, but, save as aforesaid, includes every description both of fish and of shell fish which is found in the seas to which this Act applies; and "Sea-Fishing," "Sea-Fisherman," and other expressions referring to sea-fish shall in this Act be construed to refer only to sea-fish as before defined:

The term "Sea-Fishing Boat" includes every vessel of whatever size, and in whatever way propelled, which is used by any person in sea-fishing, or in carrying on the business of a sea-fisherman:

The term "British Islands" includes the United Kingdom of Great Britain and Ireland, the Isle of Man, the Islands of Guernsey, Jersey, Alderney, and Sark, and their dependencies; and the terms "Great Britain and Ireland" and "United Kingdom," as used in the first schedule to this Act, shall be construed to mean the "British Islands" as herein defined:

The terms "Exclusive Fishery Limits of the British Islands" and "Exclusive Fishery Limits of France" mean the limits within which the exclusive right of fishing is by Article I of the first schedule to this Act reserved to British subjects and French subjects respectively.

* * * * *

PART II.—CONVENTION AND FISHERIES.

General Provisions.

6. The Convention set out in the first schedule to this Act (referred to in this Act as the Convention) is hereby confirmed and the Articles thereof and the Declaration thereto annexed shall be of the same force as if they were enacted in the body of this Act.

7. It shall be lawful for Her Majesty from time to time, by Order in Council, to make, alter, and revoke Regulations for carrying into execution this Act and the intent and object thereof, and for the maintenance of good order among sea-fishing boats, and the persons belonging thereto, and to impose penalties not exceeding 10 £. for the breach of such Regulations.

9. A sea-fishery officer, for the purpose of enforcing the provisions of this Act and of any Order in Council made thereunder, may, with respect to any sea-fishing boat within the exclusive fishery limits of the British Islands, and with respect to any British or French sea-fishing boat outside of those limits, in the seas to which this Act applies, exercise the following powers:

(1.) He may go on board it:

(2.) He may require the owner, master, and crew, or any of them, to produce any certificates of registry, licenses, official logbooks, official papers, articles of agreement, muster rolls, and other documents relating to the boat or to the crew, or to any member thereof, or to any person on board the boat, which are in their respective possession or control on board the boat, and may take copies thereof or of any part thereof:

(3.) He may muster the crew of the boat:

(4.) He may require the master to appear and give any explanation concerning his boat and her crew, and any person on board his boat, and the said certificates of registry, licenses, official logbooks, official papers, articles of agreement, muster rolls, and other documents, or any of them:

(5.) He may examine all sails, lights, buoys, barrels, floats, nets, and implements of fishing belonging to the boat:

(6.) He may make any examination and inquiry which he deems necessary to ascertain whether the provisions of this Act, or of any Order in Council made thereunder, are complied with:

(7.) He may, in the case of any person who has committed any of the acts constituted offences by this part of this Act, or by any Order in Council made thereunder, without summons, warrant, or other process, both take the offender and the boat to which he belongs, and the crew thereof, to the nearest or most convenient port, and bring him or them before a competent Court, and, subject to Article XXVII of the Convention, detain him, it, and them in the port until the alleged offence has been adjudicated upon.

Fishery Regulations.

11. If any person obstructs any sea-fishery officer in acting under the powers conferred by this Act, or refuses or neglects to comply with any requisition or direction lawfully made or given by, or to answer any question lawfully asked by, any sea-fishery officer in pursuance of this Act, such person shall be deemed to have committed an offence against the fishery regulations of this Act.

* * * * *

PART V.—MISCELLANEOUS.

66. Whereas, by a Convention concluded between the United Kingdom and France on the 26th day of January, 1826, it was amongst other matters agreed that sea-fishing boats of either country, when forced by stress of weather to seek shelter in the ports or on the coasts of the other country, should, on certain conditions, be exempted from all dues to which they would otherwise be liable, and doubts have arisen whether that part of the said Convention has ever been confirmed by the authority of Parliament, and it is expedient to remove such doubts, and to enable Her Majesty to provide for the due execution of the said Convention and of any other like Convention or Treaty which may be made by Her Majesty: Be it enacted that, where any such Convention or Treaty as mentioned in this section has been or may hereafter be concluded with any foreign country, Her Majesty may, by Order in Council, direct that every sea-fishing boat belonging to such foreign country, when forced by stress of weather to seek shelter in any port or place in the British Islands, shall, if it does not discharge or receive on board any cargo, and complies with the other conditions, if any, specified in such order, be exempt from all dues, tolls, rates, taxes, duties, imposts, and other charges to which it would otherwise be liable in such port or place, and every such boat shall be exempt accordingly.

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MARITIME PROVINCES.

STATUTES.

NOVA SCOTIA ACT OF DECEMBER 13, 1854.

(18 Vict., Cap. I.)

An Act for giving effect, on the part of the Province of Nova Scotia, to a certain Treaty between Her Majesty and the United States of America. December 13, 1854. (Passed December 13th, 1854.)

Whereas it is expedient to provide for giving effect, as regards this Province, to the Treaty between Her Majesty and the United States of America, signed on the 5th day of June, in the year of our Lord, 1854: Be it therefore enacted, by the Governor, Council, and Assembly as follows:

I. Whenever the Governor of this Province shall, by Proclamation, declare that the Treaty has taken effect according to the terms thereof, the articles enumerated in the Schedule to this Act, being the growth and produce of the United States of America, shall be admitted into this Province free of duty, so long as the Treaty shall remain in force, any Law, Act, or Statute to the contrary notwithstanding; except that if at any time The United States shall, under the terms of the Treaty, suspend the operation of the 3rd Article thereof, so far as this Province is affected thereby, then the Governor of this Province may, if he see fit, declare such suspension by Proclamation, after which the exemption from duty under this Act shall cease while such suspension shall continue, but the Governor may again, whenever such suspension shall cease, declare the same by Proclamation, from and after which such exemption shall again take effect.

II. It shall be lawful for the Governor in Council, by any order or orders to be made for that purpose, to do anything further in accordance with the spirit and intention of the Treaty, which shall be found necessary to be done on the part of this Province to give full effect to the Treaty, and any such order shall have the same effect as if the object thereof were expressly provided for by this Act.

III. When and so soon as the Treaty shall be declared by Proclamation of the Governor to be in force, and to have taken effect according to the terms thereof, as provided for by Section I of this Act, the first 18 Sections of the 94th Chapter of the Revised Statutes "Of the Coast Fisheries," together with such provisions of all other Laws, Acts, or Statutes of this Province now in force as are contrary to, or inconsistent with, the terms and spirit of the Treaty, are hereby declared to be suspended, as regards citizens and inhabitants of the United States of America, and vessels, boats, and crafts belonging to

the citizens and inhabitants of that country, and shall continue to be so suspended and not in force so long as the Treaty shall continue and be in force, any Law, Act, or Statute to the contrary notwithstanding.

NEW BRUNSWICK ACT OF NOVEMBER 3, 1854.

(18 Vict., Cap. I.)

An Act for giving effect on the part of the Province of New Brunswick to a certain Treaty between Her Majesty and the United States of America. (Passed 3rd November, 1854.)

Whereas it is expedient to provide for giving effect, as regards this Province, to the Treaty between Her Majesty and the United States of America, signed on the fifth day of June in the year of our Lord one thousand eight hundred and fifty four:

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:

1. Whenever the Governor of this Province shall by Proclamation declare that the said Treaty has taken effect according to the terms thereof, the articles enumerated in the Schedule to this Act, being the growth and produce of the said United States of America, shall be admitted into this Province free of duty, as long as the said Treaty shall remain in force, any Law, Act, or Statute to the contrary notwithstanding, except that if at any time the said United States shall, under the Terms of the said Treaty, suspend the operation of the third Article thereof, so far as this Province is affected thereby, then the Governor of this Province may, if he see fit, declare such suspension by Proclamation, after which the exemption from duty under this Act shall cease while such suspension shall continue, but the Governor aforesaid may again, whenever such suspension shall cease, declare the same by Proclamation, from and after which such exemption shall again take effect.

2. It shall be lawful for the Governor in Council, by any Order or Orders to be made for that purpose, to do anything further in accordance with the spirit and intention of the said Treaty, which shall be found necessary to be done on the part of this Province, to give full effect to the said Treaty, and any such order shall have the same effect as if the object thereof were expressly provided for by this Act.

3. When and so soon as the said Treaty shall be declared by Proclamation of the Governor to be in force and to have taken effect according to the terms thereof, as provided for by the first section of this Act, an Act made and passed in the fifteenth and sixteenth years of the Reign of Her present Majesty, intituled An Act Relating to the Coast Fisheries and for the Prevention of Illicit Trade, together with such provisions of all other Laws, Acts, or Statutes of this Province now in force as are contrary to or inconsistent with the terms and spirit of the said Treaty, are hereby declared to be suspended, and shall continue to be so suspended and not in force so long as the said Treaty shall continue and be in force, any Law, Act, or Statute to the contrary notwithstanding.

SCHEDULE TO THIS ACT.

Grain, Flour, and Breadstuffs of all kinds.
 Animals of all kinds.
 Fresh, Smoked, and Salted Meats.
 Cotton Wool, Seeds and Vegetables.
 Undried Fruits, Dried Fruits.
 Fish of all kinds.
 Products of Fish, and all other creatures living in the water.
 Poultry, Eggs.
 Hides, Furs, Skins, or Tails, undressed.
 Stone or Marble in its crude or unwrought state.
 Slate.
 Butter, Cheese, Tallow.
 Lard, Horns, Manures.
 Ores of Metals of all kinds.
 Coal.
 Pitch, Tar, Turpentine, Ashes.
 Timber and Lumber of all kinds, round, hewed and sawed, unmanufactured in whole or in part.
 Firewood, Plants, Shrubs and Trees.
 Pelts, Wool.
 Fish Oil.
 Rice, Broom Corn, and Bark.
 Gypsum ground or unground.
 Hewn or wrought or unwrought Burr or Grindstones.
 Dye Stuffs.
 Flax, Hemp, and Tow, unmanufactured.
 Unmanufactured Tobacco.
 Rags.

 PRINCE EDWARD ISLAND ACT OF OCTOBER 7, 1854.

(18 Vict., Cap. 2.)

An Act to authorize free trade with the United States of America, under a treaty between Great Britain and the United States of America. (Passed October 7, 1854.)

Whereas it is deemed expedient to authorize free trade with the United States of America, under and by virtue of the provisions of a treaty entered into between Great Britain and the United States of America, signed on the fifth day of June, one thousand eight hundred and fifty-four:

1. Be it therefore enacted, by the Lieutenant Governor, Council and Assembly, That whenever the Lieutenant Governor, or other Administrator of the Government of this Island for the time being, shall receive satisfactory evidence that the articles hereinafter enumerated will be admitted into the United States of America by law free of duty, the said Lieutenant Governor, or other Administrator of the Government of this Island for the time being, is hereby authorized and empowered to issue his proclamation, declaring that he has such evidence, and thereupon, from the date of such proclamation, the following articles, being the growth and produce of the United

States of America, to wit: grain, flour, and breadstuffs of all kinds; animals of all kinds; fresh, smoked and salted meats; cotton wool; seeds and vegetables; undried fruits; dried fruits; fish of all kinds; products of fish; and of all other creatures living in the water; poultry; eggs; hides, furs, skins or tails, undressed; stone or marble, in its crude or unwrought state; slate; butter; cheese; tallow; lard; horns; manures; ores of metals of all kinds; coal; pitch; tar; turpentine; ashes; timber and lumber of all kinds—round, hewed and sawed—unmanufactured in whole or in part; firewood; plants; shrubs and trees; pelts; wool; fish oil; rice; broom-corn and bark; gypsum, ground or unground; hewn, or wrought, or unwrought burr or grindstones, dyestuffs; flax, hemp and tow, unmanufactured; unmanufactured tobacco; rags; shall be introduced into this Island free of duty, so long as the said treaty shall remain in force; and all the other provisions of the said treaty shall go into effect, and be observed on the part of this Island with the United States of America.

DOMINION OF CANADA.

STATUTES.

ACT OF SEPTEMBER 23, 1854.

(18 Vict., Cap. 1.)

An Act for giving effect on the part of this Province, to a certain Treaty between Her Majesty and the United States of America. (Assented to 23d September, 1854.)

Whereas it is expedient to provide for giving effect, as regards this Province, to the Treaty between Her Majesty and the United States of America, signed on the Fifth day of June, one thousand eight hundred and fifty-four: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, and it is hereby enacted by the authority of the same, as follows:

I. Whenever the Governor of this Province shall, by Proclamation, declare that the said Treaty has taken effect according to the terms thereof, the articles enumerated in the schedule hereunto annexed, being the growth and produce of the said United States, shall be admitted into this Province free of duty, so long as the said Treaty shall remain in force; except that if at any time the said United States shall, under the terms of the said Treaty, suspend the operation of the Third Article thereof, so far as this Province is affected thereby, then the Governor of this Province may, if he sees fit, declare such suspension by Proclamation, after which the exemption from duty under this Act shall cease while such suspension shall continue, but the Governor may again, whenever such suspension shall cease, declare the same by Proclamation, from and after which such exemption shall again take effect.

II. It shall be lawful for the Governor in Council, by any Order or Orders to be made for that purpose, to do anything which shall be found necessary to be done on the part of this Province to give full effect to the said Treaty, and any such Order shall have the same effect as if the object thereof were expressly provided for by this Act.

III. The Act passed in the twelfth year of Her Majesty's Reign, intituled, An Act to provide for the free admission into Canada, of certain articles of the growth or production of the United States of America, on certain conditions therein mentioned, is hereby repealed.

SCHEDULE.

Grain, Flour, and Breadstuffs of all kinds,
Animals of all kinds,
Fresh, smoked and salted meats,
Cotton-wool, seeds and vegetables,
Undried fruits, dried fruits,
Fish of all kinds,
Products of fish and of all other creatures living in the water,
Poultry, eggs,
Hides, furs, skins or tails undressed,
Stone or marble in its crude or unwrought state,
Slate,
Butter, cheese, tallow,
Lard, horns, manures,
Ores of metals of all kinds,
Coal,
Pitch, tar, turpentine, ashes,
Timber and Lumber of all kinds, round, hewed, sawed, unmanufactured in whole or in part,
Firewood,
Plants, shrubs and trees,
Pelts, wool,
Fish oil,
Rice, broomcorn, and bark,
Gypsum, ground, or unground,
Hewn or wrought or unwrought burr or grindstones,
Dye-stuffs,
Flax, hemp, and tow unmanufactured,
Unmanufactured tobacco,
Rags.

COLONY OF NEWFOUNDLAND.

STATUTES.

ACT OF APRIL 23, 1845.

[8th Vict., Cap. 5.]

An Act to continue and amend an Act passed in the fourth year of the reign of Her present Majesty, entitled "An Act to regulate the packing and inspection of pickled fish for exportation from this colony." (Passed 23rd April, 1845.)

Whereas an Act was passed in the fourth year of the reign of Her present Majesty, entitled "*An Act to regulate the Packing and Inspection of Pickled Fish for Exportation from this Colony*," which will shortly expire; and it is expedient that the same should be amended and continued for a further period:

I. *Be it therefore enacted*, by the Governor, Council and Assembly, in Legislative Session convened, that the said Act shall be and the same is hereby continued in force for the period of five years; and thence to the end of the then next Session of the Legislature.

II. *And be it further enacted* that from and after the passing of this Act there shall be levied and paid to Her Majesty, Her Heirs and Successors, upon all Fresh Herrings and Caplin, and upon all Salted or Pickled Herrings and Caplin, in bulk, exported from this Colony, the sum of *Three Shillings* for every hundred weight thereof.

III. *And be it further enacted* that it shall not be lawful for any person or persons to ship or export from this Colony any quantity of Salted or Pickled Caplin in Casks, unless the same shall have been inspected and packed in like manner as Salted or Pickled Herring's are required to be inspected and packed under the said Act; and that there shall be levied and paid to Her Majesty, Her Heirs and Successors, upon all such Caplin, the sum of *Two shillings and sixpence* for every barrel thereof, excepting Dried Caplin.

IV. *And be it further enacted* that there be granted and paid to Her Majesty, Her Heirs and Successors, out of such monies as shall be in the Treasury of this Colony, and unappropriated, the sum of *Five hundred pounds* towards defraying the expense of procuring and maintaining suitable Revenue Cruisers for the protection of the British Fisheries and the Revenue.

V. *And be it further enacted*, that the duties by this Act imposed shall be paid by the exporter or exporters of such articles to the Collector or Sub-Collectors of Her Majesty's Customs, and shall be collected and secured by means, and under the regulations and penalties, and in the way and manner directed by an Act passed by the Imperial Parliament of Great Britain and Ireland in the 3rd and 4th years of the reign of His late Majesty King William the Fourth, entitled "An act to regulate the trade of the British possessions abroad," and by another Act passed in the 4th and 5th years of the Reign of

His said late Majesty, entitled "an Act to amend the laws relating to the Customs." And all goods exported contrary to the provisions of this Act shall, together with the Ship or Vessel in which they shall have been laden, be forfeited.

VI. *And be it further enacted*, that nothing herein contained shall be of any force or effect until Her Majesty's pleasure herein be made known.

ACT OF JULY 7, 1855.

(18 & 19 Vict., Cap. 2.)

An Act to give effect, on the part of the Island of Newfoundland, to a certain Treaty between Her Majesty and the United States of America. (Passed July 7, 1855.)

Whereas it is expedient to provide for giving effect, as regards the Island of Newfoundland and its dependencies, to the Treaty between Her Majesty and the United States of America, signed on the 5th day of June, in the year of our Lord, 1854.

Be it therefore enacted by the Governor, Legislative Council, and Assembly in Legislative Session convened, as follows:

1st. That whenever the Governor of this Island shall, by Proclamation, declare that the Treaty has taken effect, according to the terms thereof, the articles enumerated in the Schedule to this Act, being the growth and produce of the United States of America, shall be admitted into this Colony and its dependencies, free of duty, so long as the Treaty shall remain in force; any Law, Act, or Statute to the contrary notwithstanding; except that if at any time the United States shall, under the Terms of the Treaty, suspend the operation of the 3rd Article thereof, so far as this Island is affected thereby, then the Governor of this Island may, if he see fit, declare such suspension by Proclamation, after which the exemption from duty under this Act shall cease while such suspension shall continue; but the Governor may again, whenever such suspension shall cease, declare the same by Proclamation, from and after which such exemption shall again take effect.

2nd. It shall be lawful for the Governor in Council, by any order or orders to be made for that purpose, to do anything further in accordance with the spirit and intention of the Treaty, which shall be found necessary to be done on the part of this Island, to give full effect to the Treaty; and any such order shall have the same effect as if the object thereof were expressly provided for by this Act.

3rd. When and so soon as this Act shall have been approved by Her Majesty, and the Treaty shall be declared by Proclamation of the Governor to be in force, and to have taken effect according to the terms thereof, as provided for by the 1st Section of this Act, all such provisions of all Laws, Acts or Statutes of this Island now in force, as are contrary to, or inconsistent with, the terms and spirit of the Treaty, are hereby declared to be suspended, as regards citizens and inhabitants of the United States of America, and vessels, boats, and crafts belonging to the citizens and inhabitants of that country; and shall continue to be so suspended, and not in force, so long as the Treaty shall continue and be in force, any Law, Act, or Statute to the contrary notwithstanding.

ACT OF MAY 14, 1860.

[23 Vict., cap. 8.]

An Act for the Protection of the Salmon Fishery of this Colony, and for other Purposes. [Passed 14th May, 1860.]

Be it enacted by the Governor, Legislative Council and Assembly, in General Session convened:

I.—No person shall, by spearing or sweeping with Nets or Seines, take, or attempt to take, any Salmon, Grills, Parr or Trout, in any Bay, River, Cove, Lake, or Water-course above where the tide usually rises and falls; and Nets for taking Salmon above the usual rise and fall of the tide shall be set or placed on such River, Stream, Cove, Lake or Water-course, and at such times and in such manner as hereinafter provided for that purpose.

II.—No Stake, Seine, Weir, or other contrivance for taking Salmon, except Nets, shall be set or placed across any such River, Stream, Cove, Lake, or Water-course, and that each Net shall not extend more than one-third of the distance in a straight line across such River, Stream, Cove, Lake, or Water-course.

III.—After the passing of this Act it shall not be lawful for any person to construct or erect any Mill-dam, Weir, Rack, Frame, Train, Gate, or any other barrier or erection, in, over, or across any River, Stream, Cove, Lake, or Water-course, so as to obstruct the free passage of Salmon, Grills, Parr, Trout, or other fish resorting thereto for the purpose of spawning: Provided always, that all Mill-dams or other erections placed on, over, or across any River, Stream, or Water-course resorted to by fish for spawning, shall be built with a waste-gate, opening, or slope, sufficient for such fish to pass and return down, and which shall be kept in repair during the whole season of such fish passing up and returning.

IV.—No person shall haul, catch, or take any Salmon in any Net having the meshes, mokes, or scales of not less than four and a half inches, at least, from knot to knot.

V.—It shall not be lawful for any person to buy or sell Salmon knowing the same to have been taken in contravention of this Act; and any Salmon so taken or sold shall be declared forfeited to the complainant by any Justice of the Peace.

VI.—It shall not be lawful for any person to moor or set, or cause or procure to be moored, or set, in any Harbor, Cove, Creek, or Estuary, or on any other part of the coast of this Island or its Dependencies, for the purpose of catching or taking Salmon, any Net nearer to any other Net set or moored for a similar purpose, than one hundred yards for a single Net, and three hundred yards for a double Net or fleet of Nets.

VII.—No person shall, before the first day of May, or after the tenth day of September, in every year, by any means whatsoever, fish for, take, or catch any Salmon on any part of the coast or shores of this Island, or in or near any Bay, River, Stream, Cove, Lake, or Water-course thereof: Provided always, that if the time limited in this Section shall be found to operate injuriously in any part of this Island, it shall be lawful for the Governor and Council at any time

to appoint any other time or times, and which shall be as binding on all persons as if specially mentioned therein.

VIII.—Any person who shall violate any of the provisions of this Act in any respect shall forfeit a sum not exceeding Five Pounds, to be recovered in a summary way before any Justice of the Peace; and in default of payment thereof he shall be imprisoned in Gaol for any period not exceeding Twenty Days.

IX.—The one half of all penalties recovered under this Act shall be paid to the party prosecuting the offender to conviction, and the other half thereof to Her Majesty for the use of this Colony.

ACT OF MARCH 27, 1862.

[26 Vict., Cap. 2.]

An Act for the protection of the Herring and Salmon Fisheries on the Coast of this Island, and for other purposes. (Passed 27th March, 1862.)

WHEREAS the Breed and Fry of Herrings frequenting the Coast of this Island and the Labrador are often found to be greatly injured and destroyed by the using of Seines and Nets of too small size or mesh, and by other unwarrantable practices; and whereas complaints have been preferred to the Local Government of alleged depredations committed by the Fishermen frequenting these Coasts upon each other: for remedy whereof,

Be it therefore enacted, by the Governor, Legislative Council and Assembly, in Session convened:

I.—That no person shall haul, catch, or take Herrings in any Seine, on or near any part of the Coast of this Island, or of its Dependencies on the Coast of Labrador, or in any of the Bays, Harbors, or any other places therein, at any time between the Twentieth day of October and the Twelfth day of April in any year; and no person shall, on or near the Coast of this Island or of its Dependencies aforesaid on the Coast of Labrador, or in any of the Bays, Harbors, or other places therein, at any time, use a Seine, or other contrivance, for the catching and taking of Herrings, except by way of shooting, and forthwith tucking and hauling the same: Provided, that nothing herein contained shall prevent the taking of Herrings by Nets set in the usual and customary manner, and not used for in-barring or enclosing Herrings in any Cove, Inlet, or other place.

II.—No person shall, at any time between the Twentieth day of December and the First Day of April in any year, haul, catch or take any Herring, on or near the Coast of this Island or of its Dependencies aforesaid on the Labrador, or in any of the Bays, Harbors, or any other places therein, in any Net having the Meshes, Mokes, or Scales, of less than Two Inches and Three-eighths of an Inch, at least, from Knot to Knot, or having any false or double Bottom of any description; nor shall any person put any Net, though of legal size of mesh, upon or behind any other Net not of such size of mesh, for the purpose of catching or taking the Fry of such Herring passing through any single Net of Two Inches and Three-eighths of an Inch Mesh or Scale.

III.—No person shall wilfully remove, destroy or injure, any lawful Net or Seine the property of another, set or floating on or near the Coasts of this Island or of its Dependencies aforesaid on the Labrador, or in any of the Bays, Harbors, or other places therein, nor remove, let loose, or take any Fish from or out of any such lawful Net or Seine.

IV.—No Person shall, at any time between the Twentieth day of April and the Twentieth day of October, haul, catch, or take any Herring or other Bait for exportation, within One Mile of any Settlement situate on that part of the Coast between Cape Chapeau Rouge and Point Rosey.

V.—Any Person who shall violate any of the provisions of this Act shall for every offence forfeit a Sum not exceeding Ten Pounds; and, in addition, all Seines, Nets, and other contrivances used or employed in, about, or preparatory to the catching, hauling, taking, or in-barring of any Herrings, in violation of any of the provisions hereof, shall be liable to forfeiture, and the same may be seized at once, by any Justice, Sub-Collector of Customs, Preventive Officer, or Constable, on view or by virtue of a Warrant issued by such Justice, Sub-Collector, or Preventive Officer, on Oath to be administered by any of them, and detained until the trial of the offender, when they may be declared forfeited and ordered to be sold at Public Auction.

VI.—And Whereas an Act was passed in the twenty-third year of the Reign of Her present Majesty entitled “An Act for the Protection of the Salmon Fishery, and for other purposes”, whereby certain Nets and Seines were forbidden to be used, and certain Weirs and other erections and contrivances were prohibited from being erected at certain times and under certain circumstances, in the said Act declared:

Be it further enacted, That it shall be lawful for any Justice, Sub-Collector, Preventive Officer, or Constable aforesaid, on view, and for any Constable or other Person by virtue of a Warrant to be issued as aforesaid, to seize any Net or Seine, and to destroy any Weir or other erection or contrivance used or erected in contravention of the said recited Act, and all such Nets and Seines shall be forfeited and disposed of in manner provided by the Fifth Section of this Act.

VII.—All Forfeitures and Penalties imposed by this or the said recited Act shall be recovered, with Costs, in a summary manner, before any Justice of the Peace, for which purpose such Justice shall have full power to summon or arrest the offender, and to compel all Witnesses, either by Summons or Warrant, to appear before him on such trial, and upon conviction of such offender, such Justice shall issue his Warrant to cause such Seines, Nets, or other contrivances, so illegally used, to be sold at Public Auction, or, where permitted under the preceding Section of this Act, destroyed; and in default of payment of such penalty as may be imposed, and costs, by the party convicted, such Justice shall issue his Warrant to any Constable, or other Person, to arrest and imprison such convicted offender for a period not exceeding twenty days.

VIII.—All Penalties and Forfeitures, under this or the said recited Act, and all proceeds thereof when recovered, shall be paid to the party informing against and prosecuting such offender to conviction.

IX.—No conviction or proceeding by any Justice or other Officer, under this Act, shall be quashed or set aside for want of form, so long as the same shall be substantially in accordance with the true intent and meaning of this Act.

X.—Provided always, That nothing in this Act contained shall in any way affect or interfere with the rights and privileges granted by Treaty to the Subjects or Citizens of any State or Power in amity with Her Majesty.

XI.—The Ninth Section of the said recited Act for the Protection of the Salmon Fishery is hereby Repealed.

ACT OF MAY 1, 1866.

[29 Vlt., Cap. XI.]

An Act to amend an Act passed in the Twenty-fifth Year of the Reign of Her present Majesty, entitled "An Act for the Protection of the Herring and Salmon Fisheries on the Coast of this Island, and for other purposes." [Passed 1st May, 1866.]

Whereas it is expedient to Amend an Act passed in the Twenty-fifth year of the Reign of Her present Majesty, entitled "An Act for the Protection of the Herring and Salmon Fisheries on the Coast of this Island, and for other purposes;"

Be it therefore Enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:

The "Point Rosey" mentioned as a limit in the Fourth Section of the hereinbefore in part recited Act, is hereby declared to the "Point Rosey," or "Point Enragee" on the Western Coast of this Island near Cape Ray, in the District of Burgeo and La Poile.

ACT OF MAY 5, 1873.

[36 Vlt., Cap. III.]

An Act relating to the Treaty of Washington, One Thousand Eight Hundred and Seventy-one. [Passed 5th May, 1873.] [Repealed by Act of April 29, 1874.]

Whereas a Treaty between Her Majesty and the United States of America was signed at Washington on the eighth day of May, One Thousand Eight Hundred and Seventy-one, and was duly ratified on the seventeenth day of June in that year, which, amongst other things, contained the following Article:—

"It is further agreed that the provisions and stipulations of Articles eighteen to twenty-five of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable; but if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the Legislative

Bodies aforesaid, shall not in any way impair any other Articles of this Treaty."

And Whereas it is expedient to provide for giving effect, as regards the Island of Newfoundland and its Dependencies, to said Articles, eighteen to twenty-five of said Treaty, inclusive, so far as they are applicable to this Colony.

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

I.—As soon as the Law required to carry into operation, on the part of the United States of America, the articles set out in the Schedule to this Act, has been passed by the Congress of the United States, and come into force, all Laws of this Colony which operate to prevent the said Articles from taking full effect, shall, so far as they so operate, be suspended and have no effect during the period mentioned in the Article numbered Thirty-three in the Schedule to this Act: Provided that such laws, rules and regulations, relating to the time and manner of prosecuting the Fisheries on the coasts of this Island, shall not be in any way affected by such suspension.

II.—The Governor in Council, by any order or orders to be made for that purpose, may do anything further, in accordance with the spirit and intention of the Treaty, which shall be found necessary to be done on the part of this Island to give full effect to the Treaty; and any such order shall have the same effect as if the object thereof were expressly provided for by this Act.

III.—This Act shall not come in force until Her Majesty's assent thereto shall have been given, and until the issuing of a Proclamation under provisions of Section Two of the Act of the Imperial Parliament, entitled "The Treaty of Washington Act, One Thousand Eight Hundred and Seventy-two," and shall remain in force during the term of years mentioned in Article Thirty-three in the Schedule to this Act.

ACT OF MARCH 28, 1874.

(37 Vict., cap. 2.)

ACT to carry into effect the provisions of the Treaty of Washington, [a] as far as they relate to that Colony. (Fisheries.)

Whereas a Treaty between Great Britain and the United States of America was signed at Washington on the 8th day of May, 1871, and was duly ratified on the 17th day of June in that year, containing the following Articles, viz.:

ACT to carry into effect the provisions of the Treaty of Washington, [a] as far as XXV of this Treaty inclusive shall extend to the Colony of Newfoundland, so far as they are applicable; but if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of The United States, shall not embrace the

[a On May 5, 1873, an act was passed by the legislature of Newfoundland, entitled "An act relating to the treaty of Washington, 1871", which was repealed by an act dated April 29, 1874. (See British and Foreign State Papers, Vol. LXIII, page 38, and Vol. LXV, pages 1304-1305.)]

Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect by either of the Legislative Bodies aforesaid shall not in any way impair any other Articles of this Treaty.

Be it therefore enacted, by the Governor, Legislative Council, and Assembly, in Legislative Council convened, as follows:

1. The Governor may, at any time hereafter, by his proclamation, to be published in the "Royal Gazette" of this colony, declare that, after a time to be therein named, the provisions and stipulations of the said Articles XVIII to XXV of the said Treaty inclusive, as set forth in the Schedule to this Act, shall extend to this Colony of Newfoundland, so far as they are applicable; and at the time so named in such Proclamation the provisions and stipulations of the said Articles shall come into full force, operation, and effect in this colony, so far as the same are applicable, and shall thenceforth so continue in full force, operation and effect during the period mentioned in Article XXXIII of the said Treaty, recited in the Schedule to this Act, any law of this colony to the contrary notwithstanding.

2. The Governor in Council may, by any order or orders to be made for that purpose, do any act or thing in accordance with the spirit and intention of the said Treaty, which shall be found necessary to be done on the part of this colony, to give full force, operation, and effect to the said Treaty; and any such order shall have the same effect as if the same were expressly enacted in this Act.

3. This Act shall not come into operation until her Majesty's assent thereto shall have been given, and shall remain in force during the term of years mentioned in Article XXXIII in the Schedule to this Act.

ACT OF MAY 10, 1906.

(6 Edw. VII., Cap. 25.)

An Act to amend 62 and 63 Vic. Cap. 19, entitled "An Act relating to Light Dues." (Passed 10th May, 1906.)

SECTION 1.—Exemption of French fishing vessels on French Shore.

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. It shall be lawful for any fishing vessel of the Republic of France to enter any port or place on that part of the Coast of Newfoundland comprised between Cape Ray and Cape John, passing by the north, without paying or being liable to pay any rates or duties under the Act 62 and 63 Victoria, cap. 19, and the Minister of Finance and Customs, and all officers of Customs, shall, in any such port or place, admit all such fishing vessels to entry and clearance without any such payment.

PROCLAMATIONS.

PROCLAMATION AUTHORIZING THE GOVERNOR OF NEWFOUNDLAND TO CALL A GENERAL ASSEMBLY.

William the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c., &c., &c.

WILLIAM R.

[L. S.]

To all to whom these presents shall come, greeting:

Whereas, by Our Letters-Patent under the Great Seal of Our United Kingdom aforesaid, bearing date at Westminster the second day of March, 1832, in the second year of Our reign, We have given and granted to Our trusty and well-beloved Sir Thomas John Cochrane, Knight, Our Governor and Commander-in-Chief of Our island of Newfoundland, full power and authority to summon and call a General Assembly of the freeholders and householders within Our said island. It is therefore Our pleasure, and We hereby declare and make known to all Our loving subjects within the same, that for the purpose of the election of the members of the said Assembly, the said island shall be divided into nine districts, to be called respectively:

The district of St. John's.

The district of Conception Bay.

The district of Fogo.

The district of Bonavista.

The district of Trinity Bay.

The district of Ferryland.

The district of Placentia and St. Mary's.

The district of Burin.

The district of Fortune Bay.

And it is Our further will and pleasure, and We do hereby declare that the before-mentioned district of St. John's shall consist of and include all that part of Our said island bounded by the shore which is situate and lying between Petty Harbor and Broad Cove.

And that the before-mentioned district of Conception Bay shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Broad Cove and Bay Verds Head.

And that the before-mentioned district of Fogo shall consist of and include all that part of Our said island which, bounded in like manner, is situate between Cape St. John and Fogo island, including that island.

And that the before-mentioned district of Bonavista shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Cape Freels and Cape Bonavista.

And that the before-mentioned district of Trinity Bay shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Cape Bonavista and Cape Verds Head.

And that the before-mentioned district of Ferryland shall consist of and include all of that part of Our said island which, bounded in like manner, is situate and lying between Petty Harbor and Cape Race.

And that the before-mentioned district of Placentia and St. Mary's shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Cape Race and Rushoon.

And that the before-mentioned district of Burin shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Rushoon and Garnish.

And that the before-mentioned district of Fortune Bay shall consist of and include all that part of Our said island which, bounded in like manner, is situate and lying between Garnish and Bonne Bay.

And We do further signify and declare Our pleasure to be that the said district of St. John's shall be represented in the said Assembly by three members.

And that the said district of Conception Bay shall be represented in the said Assembly by four members.

And that each of the said districts of Fogo, of Bonavista, of Trinity Bay and of Ferryland, shall be represented in the said Assembly by one member.

And that the said district of Placentia and St. Mary's shall be represented in the said Assembly by two members.

And that each of the said districts of Burin and Fortune Bay shall be represented in the said Assembly by one member.

And it is Our will and pleasure that the Governor for the time being of Our said island do appoint some fit person to be the returning officer within each of the said districts.

And We do further declare Our pleasure to be that Our said Governor do issue in Our name writs for the election of the members of the several districts before mentioned, which writs shall be addressed to the several returning officers aforesaid, and shall by them be returned to the Colonial Secretary for the time being of Our said island.

And it is Our will and pleasure that every man, being of the full age of twenty-one years and upwards, and being of sound understanding, and being Our natural-born subject, or having been lawfully naturalized, and never having been convicted in due course of law of any infamous crime, and having for two years next immediately preceding the day of election occupied a dwelling-house within Our said island as owner or tenant thereof, shall be eligible to be a member of the said House of Assembly.

And it is Our further will and pleasure that every man who, for one year next immediately preceeding the day of election, hath occupied a dwelling-house within Our said island as owner or tenant thereof, and who in other respects may be eligible according to the

regulations aforesaid to be a member of the said House of Assembly, shall be competent and entitled to vote for the election of members of the said Assembly, in and for the district within which the dwelling-house so occupied as aforesaid may be situate.

And it is Our pleasure that the votes for the members of the said Assembly shall be taken by the said several returning officers at such one or more place or places within each of the said districts as shall for that purpose be appointed in the body of the writ addressed to the returning officer of every such district respectively, and at or within such time or times as shall for the purpose be therein limited; but inasmuch as by reason of the difficulty in internal communication within Our said island, many persons entitled to vote might be prevented from the exercise of such their franchise if in every case it were necessary to attend in person for that purpose, We do therefore declare Our pleasure to be, that in respect of any dwelling-house situate at the distance of more than fifteen miles from the nearest place of election within any of the said districts, the vote of any householder duly qualified as aforesaid may be given without his personal attendance by a written notice subscribed by such voter in the presence of two credible witnesses, and duly attested by their signatures; which notices shall be in such form as Our Governor for the time being of Our said island shall from time to time direct.

And it is Our further pleasure that if any candidate or voter at any such election shall object to any vote thus tendered, it shall be the duty of the returning officer to hear such objection and what may be alleged in support of or in answer to the same, and to examine on oath the parties by or against whom such objection may be raised, and any person or persons who may be adduced as a witness or as witnesses on either side, and upon such hearing to admit or to overrule any such objection as may to such returning officer appear just and right.

And We further declare Our will to be that the persons in favor of whom the greater number of votes shall be given in any such district shall be publicly declared by such returning officer to be duly elected to be the representatives thereof in the said General Assembly, and shall thereupon be returned and take their seats accordingly: Provided always, that in cases of peculiar doubt or difficulty it shall be competent to any such returning officer to make a special return setting forth the grounds of such doubt, upon which the said House of Assembly shall afterwards decide.

And it is Our will, and We do further declare that the Assembly so to be chosen as aforesaid, shall continue only during Our pleasure; and that the said Assembly shall not proceed to the despatch of any business unless six members at least shall be present at and during the whole of the deliberations of the said House thereupon.

And whereas it may be necessary, in order to the complete execution of the several purposes aforesaid, that further regulations should be made for the conduct of the said elections and the return of members to serve in the said House of Assembly, We have therefore authorized, and do hereby authorize, Our Governor for the time being of Our said island, by any proclamation or proclamations to be by

him from time to time issued in Our name and in Our behalf, to make such further regulations as may be necessary for the conduct of the said elections and for the return of members to serve in the said House of Assembly, and for the due discharge of the duties of the said returning officer, and which regulations shall be of full force, virtue and effect until provision be otherwise made by law; it being, nevertheless, Our pleasure that the regulations so to be made as aforesaid be not repugnant to or inconsistent with the several provisions hereinbefore contained or any of them.

Given at Our Court at St. James's, on the twenty-sixth day of July, 1832, in the third year of Our reign.

SECTION III
OF THE APPENDIX
OF THE
COUNTER CASE OF THE UNITED STATES

CORRESPONDENCE, DOCUMENTS, AND
PAPERS

PRIOR TO THE TREATY OF 1818.

PERTAINING TO THE UNRATIFIED TREATY OF 1806.

Messrs. Monroe and Pinkney to Mr. Madison.

LONDON, November 11, 1806.

SIR:

* * * * *

We shall meet the British commissioners to-morrow to proceed in the negotiation, which we are persuaded it will not require any considerable length of time to conclude. All the other topics have been heretofore brought into view and discussed, but without any intention in that stage, on either side, to push a definitive settlement of them. So much, however, has been said on each by the British commissioners, as to enable us, as we presume, to form a tolerably correct estimate of what may be obtained on several, especially those of the greatest importance. In respect to the trade with enemies' colonies, they have repeatedly told us, that on condition we would land the cargoes in the United States, store them for a month, and change the ship, they would agree that the trade might be free afterwards in the productions of those colonies to other countries, including the parent country of the colony. We have refused to comply with the condition in respect to the storing of the goods for a month, and changing the ship. Some arrangement more advantageous to us than their proposition will, we have no doubt, be obtained. The question of blockade, and others connected with it, may, we think, be satisfactorily arranged. They will agree also to acknowledge our jurisdiction to the extent of a league from our coast; we have claimed that acknowledgement to the extent of three leagues. The trade with India they will put on the footing it held under the treaty of 1794. That with the West Indies must, we fear, rest on the ground of the most favored nation only. Something, we think, may also be done in favor of an intercourse with the British provinces to the north of us. But our claim to an indemnity has been much discouraged, though we have never ceased to press it with great zeal. We shall continue to use our best endeavors to place all these great concerns on the most just and advantageous ground in our power, and shall hasten to communicate to you the result, with the greatest possible despatch, as soon as the business is concluded.

* * * * *

We have the honor to be, with great respect, your most obedient servants,

JAS. MONROE,
WM. PINKNEY.

Mr. Monroe and Mr. Pinkney to Mr. Madison.

LONDON, *January 3, 1807.*

SIR: We have the honor to transmit you a treaty which we concluded with the British commissioners on the 31st of December. Although we had entertained great confidence from the commencement of the negotiation that such would be its result, it was not until the 27th that we were able to make any satisfactory arrangement of several of the most important points that were involved in it. On the next day we communicated to you that event by several despatches, three of which were forwarded by vessels from Liverpool, so that we hope you will receive very early intelligence of it. We commit this, with the treaty, to Mr. Purviance, who, we flatter ourselves, will have the good fortune to arrive in time to deliver it to you before the adjournment of Congress.

The necessity we feel ourselves under to forward to you the treaty without delay will, we fear, render it impossible for us to enter so fully into the subject of it as on many considerations it might be proper to do. We are aware that such instruments must be construed by an impartial view of their contents, uninfluenced by extraneous matter. A knowledge, however, of the sense in which the several articles of a treaty were understood by the parties to it may in most cases be useful. It is also just to remark, that some circumstances occurred in the course of this negotiation, which, although they do not appear on the face of the instrument itself, yet, as they may have no inconsiderable influence on the future relations of the two countries, it is peculiarly important to explain. We shall endeavor to give such explanations, where they may be necessary, in the best manner that may be found compatible with the despatch which the occasion so imperiously requires, and, we flatter ourselves, without omitting any thing on any point that may be deemed of essential importance.

* * * * *

The twelfth article establishes the maritime jurisdiction of the United States to the distance of five marine miles from their coast, in favor of their own vessels and the unarmed vessels of all other Powers who may acknowledge the same limit. This Government [Great Britain] contended that three marine miles was the greatest extent to which the pretension could be carried by the law of nations, and resisted, at the instance of the Admiralty and the law officers of the Crown, in Doctors' Commons, the concession, which was supposed to be made by this arrangement, with great earnestness. The ministry seemed to view our claim in the light of an innovation of dangerous tendency, whose admission, especially at the present time, might be deemed an act unworthy of the Government. The outrages lately committed on our coast, which made some provision of the kind necessary as a useful lesson to the commanders of their squadrons, and a reparation for the insults offered to our Government, increased the difficulty of obtaining any accommodation whatever. The British commissioners did not fail to represent that which is contained in this article, as a strong proof of a conciliating disposition in their Government towards the Government and the people of the United States. The limit established was not so extensive as that which we

had contended for, and expected to have obtained; we persuade ourselves, however, that the great object which was contemplated by any arrangement of the subject, will result from that which has been made. The article in the treaty, in connexion with the causes which produced it, forms an interesting occurrence in the history of our country, which cannot fail to produce the most salutary consequences. It is fair to presume, that the sentiment of respect which Great Britain has shown by this measure for the United States, will be felt and observed in future by her squadrons in their conduct on our coast, and in our bays and harbors. It is equally fair to presume, that the example of consideration which it affords in their favor, by a nation so vastly preponderant at sea, will be followed by other Powers.

* * * * *

We have the honor to be, with great consideration and esteem, sir,
your most obedient servants,

JAS. MONROE
WM. PINCKNEY.

Mr. Madison to Messrs. Monroe and Pinkney.

DEPARTMENT OF STATE, *February 3, 1807.*

GENTLEMEN: The triplicate of your communications of November 11th has just been received. Those of September 11th had been previously received in due time.

The turn which the negotiation has taken was not expected, and excites as much of regret as disappointment. The conciliatory spirit manifested on both sides, with the apparent consistency of the interests of Great Britain, with the right of the American flag, touching impressments, seemed to promise as much success to your efforts on that subject as on the others; and notwithstanding the perseverance of the British cabinet in resisting your reasonable propositions, the hope is not abandoned that a more enlightened and enlarged policy will finally overcome scruples, which doubtless proceed more from habits of opinion and official caution than from an unbiased regard to all the considerations which enter into the true merits of the question.

In the meantime, the President has, with all those friendly and conciliatory dispositions which produced your mission and pervade your instructions, weighed the arrangement held out in your last letter, which contemplates a formal adjustment of the other topics under discussion, and an informal understanding only on that of impressment. The result of his deliberations which I am now to state to you, is, that it does not comport with his views of the national sentiment or the legislative policy, that any treaty should be entered into with the British Government which, whilst on every point it is either limited to or short of strict right, would include no article providing for a case which, both in principle and in practice, is so feelingly connected with the honor and the sovereignty of the nation, as well as with its fair interests, and indeed with the peace of both nations.

The President thinks it more eligible, under all circumstances, that if no satisfactory or formal stipulation on the subject of impressment be attainable, the negotiation should be made to terminate without any formal compact whatever, but with a mutual understanding,

founded on friendly and liberal discussions and explanations, that in practice each party will entirely conform to what may be thus informally settled. And you are authorized, in case an arrangement of this kind shall be satisfactory in its substance, to give assurances that, as long as it shall be duly respected in practice by the other party, more particularly on the subjects of neutral trade and impressments, it will be earnestly, and probably successfully, recommended to Congress by the President, not to permit the non-importation act to go into operation. You are also authorized to inform the British Government that the President, adhering to the sentiments which led him to recommend to Congress at the commencement of the session a suspension of that act, and trusting to the influence of mutual dispositions and interests in giving an amicable issue to the negotiation, will, if no intervening intelligence forbid, exercise the authority vested in him by the act of continuing its suspension from the 1st day of July to the term limited by the act, and which will afford to Congress, which will then be in session, the opportunity of making due provision for the case.

You will perceive that this explanation of the views of the President requires, that if, previous to the receipt of it, a treaty not including an article relating to impressments, should have been concluded and be on the way, the British commissioners should be candidly apprised of the reason for not expecting its ratification and that on this ground they be invited to enter anew on the business, with an eye to such a result as has just been explained and authorized.

Having thus communicated the outline assigned by the President as your guide in the important and delicate task on your hands, I proceed to make a few observations which are suggested by the contents of your last despatches, and which may be of use in your further discussions and your final arrangements.

* * * * *

MARGINAL JURISDICTION ON THE HIGH SEAS.

There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any authorities on the law of nations. If any nation can fairly claim a greater extent, the United States have pleas which cannot be rejected; and if any nation is more particularly bound by its own example not to contest our claim, Great Britain must be so by the extent of her own claims to jurisdiction on the seas which surround her. It is hoped, at least, that within the extent of one league you will be able to obtain an effectual prohibition of British ships of war from repeating the irregularities which have so much vexed our commerce and provoked the public resentment, and against which an article in your instructions emphatically provides. It cannot be too earnestly pressed on the British Government, that in applying the remedy copied from regulations heretofore enforced against a violation of the neutral rights of British harbors and coasts, nothing more will be done than what is essential to the preservation of harmony between the two nations. In no case is the temptation or the facility greater to ships of war for annoying our commerce, than in their hovering on our coasts and about our harbors; nor is the national sensibility in any case more justly or more highly excited than

by such insults. The communications lately made to Mr. Monroe, with respect to the conduct of British commanders, even within our own waters, will strengthen the claim for such an arrangement on this subject, and for such new orders from the British Government, as will be a satisfactory security against future causes of complaint.

* * * * *

I have the honor to be, &c.

JAMES MADISON.

Mr. Madison to Messrs. Monroe and Pinkney.

DEPARTMENT OF STATE, May 20, 1807.

GENTLEMEN :

My letter of March 18th acknowledged the receipt of your despatches and of the treaty signed on the 31st December, of which Mr. Purviance was the bearer, and signified that the sentiments and views of the President, formed on the actual posture of our affairs with Great Britain, would, without any useless delay, be communicated. The subject is accordingly resumed in this despatch, with which Mr. Purviance will be charged. To render his passage the more sure and convenient, he takes it in the sloop of war *Wasp*, which will convey him to a British port, on her way to the Mediterranean. She will touch also at a French port, probably *l'Orient*, with despatches for General Armstrong and Mr. Bowdoin, and will afford a good opportunity for any communications you may have occasion to make to those gentlemen.

The President has seen, in your exertions to accomplish the great objects of your instructions, ample proofs of the zeal and patriotism in which he confided, and feels deep regret that your success has not corresponded with the reasonableness of your propositions and the ability with which they were supported. He laments more especially that the British Government has not yielded to the just and cogent considerations which forbid the practice of its cruisers in visiting and impressing the crews of our vessels, covered by an independent flag, and guarded by the laws of the high seas, which ought to be sacred with all nations.

The President continues to regard this subject in the light in which it has been pressed on the justice and friendship of Great Britain. He cannot reconcile it with his duty to our seafaring citizens, or with the sensibility or sovereignty of the nation, to recognize, even constructively, a principle that would expose, on the high seas, their liberty, their lives—every thing, in a word, that is dearest to the human heart, to the capricious or interested sentences which may be pronounced against their allegiance by officers of a foreign Government, whom neither the law of nations nor even the laws of that Government will allow to decide on the ownership or character of the minutest articles of property found in a like situation.

* * * * *

That you may the more fully understand his impressions and purposes, I will explain the alterations which are to be regarded as essential, and proceed then to such observations on the several articles as will show the other alterations which are to be attempted, and the degree of importance respectively attached to them.

1. Without a provision against impressments, substantially such as is contemplated in your original instructions, no treaty is to be concluded.

* * * * *

Fifth. Articles 18 and 19. An effect of these articles is to secure to British cruisers and their prizes a treatment in American ports more favorable than will be permitted to those of an enemy, with a saving of contrary stipulations already made, and a prohibition of any such in future. As none of our treaties with the belligerent nations (France excepted) stipulate to their cruisers an equality in this respect, and as there are parties to the war with whom we have no treaties, it follows that a discrimination is made in the midst of war between the belligerent nations, which it will not be in the power of the United States to redress.

Weighty considerations would dissuade from such a deviation from a strict equality towards belligerent nations, if stipulated at a time least liable to objection. But it would be impossible to justify a stipulation in the midst of war, substituting for an existing equality an advantage to one of the belligerent parties over its adversaries; and that, too, without any compensation to the neutral, shielding its motive from the appearance of mere partiality. Hitherto the United States have avoided, as much as possible, such embarrassments; and with this view have gratuitously extended to all belligerents the privileges stipulated to any of them. Great Britain has had the benefit of this scrupulous policy; she can, therefore, with the less reason expect it to be relinquished for her benefit.

The last paragraph of the nineteenth article establishes a just principle as to the responsibility of a neutral nation, whose territory has been violated by captures within its limits; but by extending the principle to the two miles added to our jurisdiction by the twelfth article, qualified as that addition is, it is made peculiarly important that an amendment should take place.

Passing by the failure of a reciprocity, either in the terms or the probable operation of the responsibility, the United States seem to be bound to claim from the enemies of Great Britain redress for a hostile act, which such enemies may not have renounced their right to commit within the given space; making thus the United States liable to the one party, without a correspondent liability to them in the other party; and, at the same time, entitling Great Britain to redress for acts committed by her enemies, which she has reserved to herself a right to commit against them.

Should all the other belligerent nations, contrary to probability, concur in the addition of two miles to our jurisdiction, this construction would still be applicable to their armed ships; those unarmed alone being within the additional immunity against British cruisers; and the armed as well as the unarmed ships of Great Britain being expressly within the additional responsibility of the United States.

* * * * *

Art. 12. It is much regretted that a provision could not be obtained against the practice of British cruisers, in hovering and taking stations for the purpose of surprising the trade going in and out of our harbors; a practice which the British Government felt to be so inju-

rious to the dignity and rights of that nation, at periods when it was neutral. An addition of two miles, nevertheless, to our maritime jurisdiction, so far as to protect neutral and other unarmed vessels, notwithstanding its want of any thing like a due reciprocity, is not without its value. This value will at the same time be very materially impaired, if the stipulation cannot be liberated from the clause requiring the consent of the other belligerent nations, as necessary to exempt their vessels from search and seizure. None of the other belligerent nations have, in fact, unarmed vessels engaged in our trade, nor are they likely to have any during the war; and these alone could derive advantage from their consent, their armed vessels being expressly excepted. There can be no motive with them, therefore, to agree to the regulation. They would rather be tempted to embarrass it, with a view to continue, as much as possible, vexations which lessen the mutual good will of the parties. And as, by their not agreeing to the regulation, the right is reserved to British cruisers to examine all vessels for the purpose of ascertaining whether they may not belong to a belligerent, the disturbance of our trade might be little diminished within the additional two miles. Besides the mere interruption of a search concerning the vessel, it is hardly to be expected, from the general spirit of cruisers, that the search will not be extended to the cargo; and if the latter should be thus or otherwise found or suspected to be of a confiscable sort, that the temptation to capture would be resisted, the less so, perhaps, as the increased distance from the shore and the increased difficulty of proof would favor the chance of condemnation, or at least countenance courts in their propensity to refuse damages and costs to the claimants.

To secure the advantage promised by this article, the right of search ought to be suppressed altogether, the additional space enjoying in this respect the same immunity as is allowed to the marine league. To this object the President wishes your endeavors to be directed.

* * * * *

I have the honor to be, &c.

JAMES MADISON.

Mr. Monroe to Mr. Madison, Secretary of State.

RICHMOND, *February 28, 1808.*

SIR:

It appears by your letter of May 20, 1807, which was forwarded by Mr. Purviance to Mr. Pinkney and myself at London, and received on the 16th July, that you had construed several articles of the treaty which we had signed with the British commissioners on the 31st December, 1806, in a different sense from that in which they were conceived by us. As the course we were instructed to pursue by your letter of February 3d, with regard to that treaty, which was confirmed in that of May 20th, was in no degree dependent on our construction of any of its articles, or on the political considerations which induced us to sign it, we deemed it unnecessary to enter into

any explanation in reply, either of our construction of its articles, or of the political considerations alluded to. We thought it more consistent with our duty to look solely to the object of our instructions, and to exert our utmost efforts to accomplish it, and we acted in conformity to that sentiment. The result of these efforts was made known by the documents which I had the honor to present to you when I was lately at Washington, being copies of a joint despatch which Mr. Pinkney and I have forwarded by Mr. Rose. We had flattered ourselves that it might have been practicable to obtain the amendments of the treaty which the President desired, as the state of affairs in Europe have become more favorable to such a result, but in that we were disappointed. We found no difficulty in accomplishing the other object, of setting it aside, as we were instructed to do, in case the proposed amendments were not acceded to.

* * * * *

The twelfth article stipulates that Great Britain shall not stop the vessels of the United States within five marine miles of their coast, except for the purpose of examining whether they be American or those of another Power; and that she shall not stop the unarmed vessels of other Powers within the same limit, provided they acknowledge it, except to ascertain whether they belong to those who have acknowledged it. The vessels of the Powers who do not adopt the regulation are not affected by it. They remain under the ordinary protection of the law of nations, which extends to the distance of cannon shot, or three miles from the coast. Beyond that limit the enemies of Great Britain have a right to search and seize her vessels, without being amenable to the United States; and the same right is reserved to her by this article as if it had not been entered into. Vessels of war are expressly excluded from the advantage of the regulation.

It is the sole object of the twelfth article to secure to the United States an accommodation, by extending their jurisdiction on their coast, in what concerns themselves, from three to five miles. The stipulation is unconditional as to them, but conditional as to other Powers, dependent on their acknowledging the same limit. It is made reciprocal, by being extended to the British Dominions northward of the United States; a circumstance which merits attention, as it precludes the idea that any other equivalent was expected or intended to be given for it. It would have been extended to the dominions of Great Britain in Europe and elsewhere had the British commissioners desired it; they declined it, from a fear that it might produce some innovation in the general doctrine of the law of nations on the subject. This is, I think fairly to be inferred from the instrument itself.

The last paragraph of the nineteenth article stipulates that neither of the parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coast, nor within the jurisdiction described in the twelfth article, so long as the provisions of the said article shall be in force, by the ships of war of other Powers; but in case it should so happen, the party whose territorial rights shall thus have been violated shall endeavor to obtain from the offending party full and ample satisfaction for

the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

If any advantage is given to Great Britain by the arrangement proposed by the twelfth article and this clause of the nineteenth, to the prejudice of her enemies or of the United States, it must be by this clause. She can certainly claim none under the twelfth article. This clause consists of two distinct members of very different import. The first contains a general stipulation conformable to the law of nations, applicable to all the dominions of both parties, and equally so to their ships of war and merchant vessels. With respect to the latter, however, it is conditional. The second member applies to the arrangement made in the twelfth article, and in the sense and spirit of that article. If the twelfth article is carried into effect in favor of other Powers, which can only be done by their consent, then the advantage which is secured to them by it will accrue likewise to Great Britain. What is that advantage? Protection to their merchant vessels within the additional two miles, and nothing else. It is obvious that the protection which is stipulated in favor of ships of war is provided for by the first member of the clause, and not by the second. It cannot be by both, for the distance defined by them is different, it being three miles in one and five miles in the other. It is equally obvious that the stipulation contained in the second member of the clause relative to the twelfth article, is intended to operate in the spirit of that article, and to be dependent on it. By the terms "nor within the jurisdiction described in the twelfth article so long as the provisions of the said article shall be in force," the stipulation contemplated is made conditional. In force in respect to whom? Not the United States, because it was unconditional as to them. It was conditional only with respect to other Powers. Other reasons might be given to show that the arrangement under consideration is not liable to the objection made to it, but I presumed that those stated will be satisfactory.

The difficulty to obtain the accommodation which was yielded in the twelfth article was extreme. We labored most earnestly to extend it to other Powers without their consenting to reciprocate it in favor of Great Britain, but that could not be accomplished. The British commissioners urged that as Great Britain predominated at sea, and must lose by the concession in any form, it would be unjust for her to make the concession in their favor, unless they would allow her the advantage of it. Finding that it was impossible to extend the additional limit to other Powers on other terms, we thought it advisable to adopt the arrangement in respect to them conditionally, putting it in their power to accept or reject it as they thought fit. We flattered ourselves that as they could not lose by it, they would not refuse their assent to an arrangement by which they might gain, especially as it would prove advantageous to a friendly Power. We deemed it highly important to establish the additional limit in favor of the United States, from the advantage it might afford to their commerce within it, and from the effect which the measure seemed likely to produce on the future conduct of the British squadrons on our coast, by whom it could not fail to be considered as a severe censure on the past.

It is readily admitted that more suitable terms might have been adopted to accomplish the object in view. But it ought to be recollected that as the right of jurisdiction imposes of necessity the obligation of protection, without a special exception to it, there was some difficulty in making an arrangement which should secure to the United States the advantage which they desired, and at the same time exempt them from the duty incident to it.

* * * * *

I have the honor to be, with great consideration and esteem, your very obedient servant,

JAMES MONROE.

SUBSEQUENT TO THE TREATY OF 1818.

FRANCO-AMERICAN CONTROVERSY, 1822-1824.

Mr. Reed to Mr. Adams.

MARBLEHEAD, 15 March 1822

SIR, I have the honour to inclose for your perusal several depositions, taken and forwarded at the request of persons engaged in the Newfoundland and Labrador Fishery, who are desirous of knowing from the proper authority, if the french Govt have the exclusive right of taking & curing Fish on the coast of Newfoundland between Cape Ray & the Carpool Islands, as claimed & enforced, as set forth in these depositions. The determination of this point is felt to be of great importance to our Fisheries at all times, as the claim of the French covers the most valuable part of the coast for taking and curing Fish, as the business can be commenced there, several weeks earlier than on any other part of the coast, and the Season is so short, at longest, as barely to give time sufficient for making the voyage in the best manner: and is of the greatest consequence at this period (of general peace) particularly, as the general competition has reduced the profits of this branch of our Industry so much that it barely support itself under the most favourable circumstances: and I feel warranted by the sad experience of the Inhabitants of this Town who have hitherto been chiefly employed in this business, to add that unless a change shall shortly take place, or some further means can be devised for their encouragement herein. That this Branch of our Employment already reduced below half its amount in former times, both before & since the revolutionary war—must shortly be abandoned altogether.

I have the honor to be very respectfully Your Obt Servt.

WILLIAM REED

to The Hon^e JOHN Q. ADAMS Esq.

Secy of State for the U. S. Washington.

[Inclosure.]

I Thomas Elkins Master of the Schooner Aretas of Marblehead, do testify and say, that I sailed from the port of Marblehead in the spring of the year of our Lord eighteen hundred & twenty, on a fishing voyage to the coast of Newfoundland & in the latter part of May entered St. George's Bay on the south coast in the Gulf of St. Lawrence, and there found the french Sloop of war "Loliver" whose commander forbade me & other vessels in company, fishing at any harbour or Island between Cape Ray in Lat. 47.30 & the Carpool Islands in Lat. 51-10 on penalty of seizure of our vessels; That in the year following in pursuing a similar voyage & lying in the Bay of Port a Port fishing, was boarded by an officer from a French ship of war lying in St. George's Bay and ordered away and threatened

with seizure if I attempted again to catch Fish any where on that coast as before described. In Testimony of the Truth of the foregoing I subscribe my name this 14 March 1822

THO^s ELKINS

Marblehead

I Philip H. White, Master of the Schooner called the John Quincy Adams of Marblehead do testify and say that, I was in company with Captain Thomas Elkins of the Schooner Aretas, being also on a fishing voyage in the years 1820 and 1821, as stated in the foregoing certificate and received the same treatment as he has therein represented: In Testimony of the Truth hereof subscribe my name at Marblehead 14 March 1822

PHILIP H. WHITE

I John High do testify and say that I was master of the Schooner Betsy of Marblehead on a fishing voyage to the coast of Newfoundland in 1821 and was in company with Captain Thomas Elkins of the Schooner Aretas and Capt. Philip H. White of the Schooner "John Quincy Adams" at the Bay of Port a Port in the latter part of the month of May and was ordered away and forbidden to fish there, or any where on that coast, by an officer of a french Ship of war lying at St. Georges Bay, as stated by Captain Elkins in the foregoing certificate.

In testimony whereof I subscribe my name this 14 March 1822 Marblehead.

JOHN HIGH.

I Edward Crowinshield, do testify and say that I was master of the Schooner Bird of Marblehead on a fishing voyage to the coast of Newfoundland in the Spring of 1821 and was fishing at the Bay of Islands about the first of June in company with about thirty sail of American fishing vessels, when an officer from a french Ship of war lying in St. Georges Bay boarded my vessel and forbade me fishing there or any place on the shore of Newfoundland between Cape Ray and the Carpoon Islands on penalty of seizure, and also all the other vessels in Company.

In testimony of the truth hereof I subscribe my name at Marblehead 14 March 1822.

EDWARD CROWINSHIELD.

I Jonas Dennis of Marblehead of lawful age do testify & say that I was on board and one of the crew of the Schooner Bird Edward Crowinshield Master—on a fishing voyage to the coast of Newfoundland in the year 1821 and confirm the statement made by him.

In testimony whereof I subscribe my name at Marblehead this 14 March 1822.

JONAS DENNIS.

STATE OF MASSACHUSETTS

Essex

SS Marblehead March 14 1822—There, Thomas Elkins, Philip H. White, John High, Edward Crowinshield & Jonas Dennis, personally appeared and made solemn oath to the truth of the foregoing certificates by them severally subscribed.

Before William Reed, Justice of the Peace for the State.

No. 49.]

Mr. Adams to Mr. Gallatin.

DEPARTMENT OF STATE,

Washington, 28 June, 1822.

SIR: From the papers, copies of which are herewith enclosed, you will perceive that in the years 1820 and 1821 several fishing vessels of the United States were ordered away from their fishing stations on the coast of Newfoundland, within the limits secured to us by the Convention of 20 Oct^r. 1818, by armed vessels of France, and upon the threat of seizure. As the Commanders of those armed vessels no doubt did not correctly understand their orders from their Government, you are requested to make such a representation to the French Government, as may induce them to rectify those orders for the future.

I am with great Respect, Sir, your very humble and obed^t. serv^t
(Signed) JOHN QUINCY ADAMS

Papers enclosed

Wm. Reed to Secy of State—Marblehead, 15 March, 1822

Depositions (one paper) enclosed in above.

Mr. Adams to Mr. Reed.

DEPARTMENT OF STATE,

Washington 3 July 1822.

SIR: I duly received your Letter of the 15 of March together with its enclosures—The subject to which its relates has received and will continue to receive, the deliberate consideration of the President—As it will require certain explanations with the Government of France, upon which instructions have been forwarded to Mr. Gallatin, some time may elapse before I may be able definitively to answer your enquiries—As the cases stated in the papers which you enclosed to me happened in the years 1820 and 1821, can you inform me whether any similar interruption of our Fishermen has happened by French armed Vessels in the course of the present year.

I am with much respect Sir, your very humble and obedient servant.

JOHN QUINCY ADAMS.

Mr. Gallatin to Viscount de Chateaubriand.

PARIS, 22d January 1823.

SIR: Authentic information has been received by the Government of the United States that several of their fishing vessels were, in the years 1820 and 1821, ordered away from their fishing stations on the western coast of Newfoundland, within the limits secured to them by the Convention with Great Britain of 20th October 1818, by armed vessels of France and upon the threat of seizure. I have not yet been informed whether the same proceeding was repeated in the year 1822.

The President of the United States has no doubt that the commanders of those armed vessels did not correctly understand their

orders, and has instructed me to make this representation to His Majesty's Government and to request that those orders may be rectified for the future. I beg leave to call Your Excellency's early attention to that subject, and have the honor to enclose a copy of the articles of the Convention abovementioned which relates to the fisheries.

I request Your Excellency to accept &c.

(Signed)

ALBERT GALLATIN.

Viscount de Chateaubriand to Mr. Gallatin.

PARIS le 28 Fevrier 1823.

MONSIEUR: Vous m'avez adresse avec la lettre que vous m'avez fait l'honneur de m'ecrire le 22 Janvier, le premier article d'une convention conclue le 20 Octobre 1818 entre les Etats Unis et la Grande Bretagne. Cet article stipule que les habitans des Etats Unis auront, en commun avec les sujets de S. M. Britannique le droit de prendre, secher et conserver le poisson sur une partie des cotes de Terre neuve, et sur celle des isles Madeleine et du Labrador.

L'objet de la communication que vous m'avez faite etant d'obtenir que les pecheurs Americains ne soient point troubles par les vaisseaux armes de la France, dans les limites qui leur ont ete garanties par cette convention, je crois devoir examiner avec vous, Monsieur, quelles ont ete les conventions qui avoient ete anterieurement faites entre la France et les Etats Unis, sur l'exercice du droit de peche dans les memes parages.

Les Etats Unis s'etoient engages par l'article 10 du traite conclu entr'eux et la France le 6 Fevrier 1778 a ne jamais troubler les sujets du Roi tres chretien dans la jouissance et l'exercice du droit de peche sur les bancs de Terreneuve, non plus que dans la jouissance indefinie et exclusive qui leur appartenoit sur la partie des cotes de cette isle, designee dans le traite d'Utrecht.

Une disposition analogue fut inseree dans la convention conclue le 30 Septembre 1800 entre les deux puissances; et l'article 27 declare qu'aucune des deux nations ne viendra participer aux pecheries de l'autre sur ses cotes, ni la troubler dans l'exercice des droits qu'elle a maintenant ou qu'elle pourroit acquerir sur les cotes de Terreneuve, dans le Golfe de St. Laurent, ou partout ailleurs, sur les cotes d'Amerique ou nord des Etats Unis.

Avant que ce dernier traite fut conclue entre la France et les Etats Unis, la France jouissoit du droit de peche et de secherie sur les cotes septentrionales et occidentales de Terre neuve, dans les limites successivement determinees par ses traites avec l'Angleterre, savoir: par l'article 13 du traite d'Utrecht de 1713, par l'article 5 du traite de 1763, et par l'article 5 du traite de 1783. Les Etats Unis, apres avoir reconnu le droit de la France, et apres avoir declare dans l'article 10 du traite conclu avec elle en 1778 qu'ils ne la troubleroient jamais dans sa jouissance indefinie et exclusive, ne pouvoient modifier que de concert avec elle leurs premiers engagements sur ce point. La convention qu'ils ont conclu en 1818 avec l'Angleterre n'a pas change leur rapports avec la France; et lorsqu'ils ont obtenu de l'Angleterre

la liberté de pêches sur une partie des cotes de Terre-neuve, ils n'ont pu acquérir en effet qu'une liberté nécessairement limitée par leurs propres engagements envers la France, et par la déclaration qu'ils avoient faite de ne pas la troubler dans l'exercice de ses droits, déclaration renouvelée dans la convention conclue en 1800 entre les Etats Unis et la France.

La durée de cette convention n'étoit, il est vrai, que de 8 années; et après ce terme elle a cessé d'être en vigueur. Mais les anciens droits qu'elle avoit reconnus ne pourroient pas se trouver détruits, parceque le tems de son exécution étoit expiré; car ces droits existoient antérieurement: ils n'étoient pas l'effet d'une concession de la part des Etats Unis; et l'article 10 du traité de 1778, où ces droits avoient déjà été rappelés, ne faisoit qu'en constater l'authenticité, puisqu'il reconnoissoit que la jouissance indéfinie et exclusive de la pêche sur une partie des cotes de Terre neuve appartenoit à la France conformément au véritable sens des traités d'Utrecht et de Paris.

La question étant ramenée à ce point je dois, Monsieur, considérer dans le nouvel article dont vous m'avez donné communication, deux parties très distinctes.

La France n'a aucune observation à faire contre l'exercice du droit de pêche et de sécherie des Américains sur la côte méridionale de Terre neuve. Elle-même n'a jamais joui du droit de pêche sur ce point; et elle ne peut avoir rien à revendiquer.

Quant à la jouissance de la pêche sur la côte occidentale; les Etats Unis s'étoient engagés envers la France, dès l'année 1778 à ne jamais la troubler dans l'exercice de ce droit. Ils avoient même déclaré à cette époque qu'ils regarderoient la jouissance de la France comme indéfinie et exclusive. Tant que cet engagement subsiste, il doit être respecté: il doit être la base des instructions données par l'un et l'autre gouvernement à leurs pêcheurs et aux commandans de leurs stations maritimes; et un tel engagement ne pourroit être modifié que de concert entre les deux puissances.

Je vous prie, Monsieur, de vouloir bien faire part à votre Gouvernement de la communication que j'ai l'honneur de vous faire en réponse à la note que vous m'avez adressée. Cette communication le portera sans doute à donner des ordres pour prévenir les difficultés auxquelles pourroit donner lieu quelque méprise sur l'application des traités.

Agreez, Monsieur, les assurances, &c.,

CHATEAUBRIAND.

[Translation.]

PARIS, *February 28, 1823.*

SIR: In the letter which you did me the honor to write me on January 22 last, you sent me the first article of a convention concluded October 20, 1818, between the United States and Great Britain. This article stipulates that the inhabitants of the United States shall, in common with the subjects of His Britannic Majesty, have a right to catch, dry, and cure fish on part of the coasts of Newfoundland and on the coast of Madeleine Islands and Labrador.

The object of the communication which you made to me being to insure American fishermen not being disturbed by the armed vessels of France within the boundaries which have been guaranteed to them by this convention, I think I must examine with you, Sir, what con-

ventions had been previously concluded between France and the United States regarding the right to fish in the same localities.

The United States pledged themselves, by Article 10 of the Treaty concluded between them and France on February 6, 1778, never to disturb the subjects of the Most Christian King in the enjoyment and exercise of the right to fish on the banks of Newfoundland, nor in the perpetual and exclusive enjoyment which belonged to them on the part of the coasts of this island designated in the treaty of Utrecht.

A similar provision was inserted in the convention concluded September 30, 1800, between the two Powers; and Article 27 declares that neither of the two Nations shall come and participate in the fisheries of the other on its coasts, or disturb it in the exercise of the rights which it has now or which it might acquire on the coasts of Newfoundland, in the Gulf of St. Lawrence, or anywhere else on the coasts of America or north of the United States.

Before this latter treaty was concluded with the United States, France enjoyed the right of fishing and drying fish on the northern and western coasts of Newfoundland, within the limits successively determined by her treaties with England, to wit: By Article 13 of the Treaty of Utrecht of 1713, by Article 5 of the Treaty of 1763, and by Article 5 of the treaty of 1783. The United States, after recognizing the right of France, and after declaring in Article 10 of the Treaty concluded with her in 1778 that they would never disturb her in her perpetual and exclusive enjoyment, could not modify their original pledges on this point without her consent. The convention which they concluded in 1818 with England has not changed their relations with France; and when they obtained from England the freedom of fishing on a part of the coasts of Newfoundland, they could not in reality obtain more than a freedom necessarily limited by their own pledges toward France and by the declaration which they made not to disturb her in the exercise of her rights, a declaration which was renewed in the convention concluded in 1800 between the United States and France.

The duration of this convention was only 8 years, it is true, and after the expiration of that period it ceased to be in force. However, the ancient rights which it recognized could not have been destroyed because the period of its execution had expired, for these rights existed previously and were not the result of a concession on the part of the United States, Article 10 of The treaty of 1778, in which these rights were recalled, merely confirming their genuineness by recognizing that the perpetual and exclusive enjoyment of the fishing rights on a part of the coasts of Newfoundland belonged to France in accordance with the real meaning of the treaties of Utrecht and Paris.

The question being brought up to this point, I must, Sir, consider two very distinct parts of the new article which you have communicated to me.

France has no observation to make against the exercise of the right of fishing and drying fish by Americans on the southern coast of Newfoundland. She has never enjoyed the right of fishing at this point herself, and can have nothing to claim.

As to the enjoyment of the right of fishing on the western coast, the United States pledged themselves to France in 1778 never to

disturb her in the exercise of this right. They even declared at that time that they would regard the enjoyment of this right by France as perpetual and exclusive. As long as this pledge continues in force, it should be respected. It should be the basis of the instructions given by either Government to their fishermen and to the commanders of their naval stations, and such an agreement can not be modified without the consent of both Powers.

I beg of you, Sir, to kindly convey to your Government the communication which I have the honor to make to you in reply to the note which you addressed to me. This communication will doubtless induce it to give orders for the purpose of preventing any trouble which might arise from any mistake in the enforcement of the treaties.

Accept, Sir, the assurances, etc.

Mr. Gallatin to Viscount de Chateaubriand.

PARIS 14th March 1823.

SIR: I had the honor to receive Your Excellency's letter of the 28th of February in answer to mine of the 22d of January, on the subject of the fisheries on the western coast of the island of Newfoundland.

The right claimed by the United States on that part of the coast does not embrace that of drying and curing fish on shore, which is there enjoyed by France to the exclusion of the Americans: but they contend for the liberty to take fish of every kind on the said coast from Cape Ray to the Quirpon islands, though not to the exclusion of the French, who have also the same right there. The United States therefore, only insist that the right thus enjoyed by France, that of taking fish on the portion of the coast abovementioned, is not exclusive.

Your Excellency has appealed, in support of the exclusive right claimed by France, to treaties and conventions which are no longer in force, and seems to argue as if the engagement contracted by one of those, was nevertheless still obligatory on America. It is at the same time asserted that this exclusive right, being derived from prior treaties, existed before those made between the two countries. This appears to me the true and only question which can possibly be a subject of discussion. But how it can be maintained that the United States are still bound either by the 10th article of the treaty of 1778, or by the 27th article of the convention of 1800, that a treaty which is no longer in force is still in part binding on one of the parties, is not easily understood.

It was agreed by the 10th article of the treaty of 1778 "that the United States, their citizens and inhabitants, should never disturb the subjects of the Most Christian King, in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belonged to them on that part of the coast of that island which is designated by the treaty of Utrecht, nor in the rights relative to all and each of the isles belong-

ing to His Most Christian Majesty; the whole conformable to the true sense of the treaties of Utrecht and Paris."

It must in the first place be observed, that the part of the coast of Newfoundland which was designated by the treaty of Utrecht, was on the eastern and not on the western side of that island, that it extended from Cape Bonavista to the Quirpon islands, and that it did not embrace any portion whatever of the western coast from the Quirpon islands to Cape Ray, which is now in question. The article having no reference to any right of fishing which might thereafter be acquired on any other part of Newfoundland by France, either by exchange or otherwise, the obligation then contracted by the United States does not apply to the western coast.

Supposing however, for the sake of argument, that the conditions might by implication be considered as having, after the treaty of Paris of 1783, become applicable to the coast in question, still the engagement could have had no longer duration than the treaty of 1778 of which it made part. The United States and France had not it in their power by that treaty to alter the true sense and meaning of that of Utrecht contracted between France and Great Britain. All they could do was to agree that the United States should be bound to give it the construction desired by France. Whether considered as making an alteration in her favor, or, what from the whole tenor of the article is very doubtful, as declaratory of what, in the opinion of both parties, was the true intention of antecedent treaties, the obligation on the United States to abide by that engagement, or by that opinion, ceased to be binding on them the moment that the treaty of 1778 was abrogated.

It is not presumed that Your Excellency means to contend that that treaty is itself yet in force. Without referring to antecedent facts or to the subsequent uniform conduct of both Governments, the 2d article of the Convention of 1800, and the modification inserted in its ratification, by which the parties expressly renounced all pretensions which might be derived from former treaties, are sufficient to remove every doubt on that question. The 27th article of that convention affords an additional proof, if any was wanting, that the parties considered the 10th article of the treaty of 1778 as making no exception, and as being no more binding than any other part of that treaty; since it would have been unnecessary, had it been still in force, to insert that provision in the convention. And, relating to the same subject, that 27th article has at all events superceded the 10th article of the treaty of 1778, even supposing, what it is impossible to establish, that this had survived all the other conditions of that treaty.

Recurring then, to the stipulations of 1800, it will be seen that the United States were no longer willing to renew that by which they had engaged in 1778, to consider as exclusive the right of France to fish on any part of the coast of Newfoundland. The provisions of the 27th article are in the following words.

"Neither party will intermeddle (in the French copy, *ne viendra participer*) in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds or may acquire on the coast of Newfoundland, in the Gulf of St. Laurence, or elsewhere on the American coast northward of the United States. But the whale and seal fisheries shall be free to both in every quarter of the world."

Not only the word "exclusive," is not to be found in the part of the article which relates to Newfoundland; but it is evident from the tenor of the whole, that it was not intended by either party to recognize any such exclusive right in that quarter. There is an express distinction made between the coasts of each country, and those of Newfoundland and elsewhere. When speaking of the first, both parties respectively engage not to intermeddle with, not to participate in the fisheries of the other. Instead of this, they only agree not to disturb each other in their rights on the coast of Newfoundland, clearly intimating that to participate was not to disturb; since, had it been otherwise, the expressions "not to intermeddle," "not to participate," would have been preserved and made applicable to the fisheries on that coast as well as to those on the coasts of each country. It would indeed be preposterous to suppose that the United States by agreeing not to disturb France in the exercise of the rights which she might acquire any where on the coast of Newfoundland, in the Gulf of St. Laurence or elsewhere on the American coast northward of the United States, engaged not to participate in such fisheries, and to consider as exclusive the rights which might be acquired by France; since this would have been tantamount to a renunciation on their part of nearly the whole of the fisheries they then enjoyed and to which they had an indisputable right. But the article makes no distinction whatever between the rights then held and those which might be thereafter acquired by France. If these therefore could not be exclusive, neither those then held were recognized as such by the article.

I have alluded to those stipulations only as connected with those of 1778, to which they had been substituted. They have, as well as the convention in which they were inserted, and all the preceding treaties between France and the United States, ceased to be in force. Nothing remains of the obligation formerly contracted by both countries on the subject of the fisheries: and the question recurs, which is stated in part of Your Excellency's letter, whether, independent of any such former stipulations, and by virtue of any treaty antecedent to the right of the United States to take fish on the western coast of Newfoundland, France had there an exclusive right. That it was not viewed as such by either the United States or Great Britain, is sufficiently evident from the article in the convention of 1818, of which I had the honor to enclose a copy to Your Excellency. And, after a most attentive perusal of the treaties alluded to, I have been unable to discover on what ground the presumed exclusive right was founded. It would be premature to enter into that discussion at this time, and until the special treaty-stipulations and arguments by which the claim is intended to be supported shall have been communicated. Whenever it may suit Your Excellency's convenience to make that communication, the considerations which may be urged by France will receive all the attention to which they are so justly entitled, and be discussed in the most amicable temper. But the United States cannot, in the meanwhile and until the question shall have been settled, order or advise their citizens to abstain from what they must till then consider as their just right, the liberty to participate in common with France and without disturbing them, in the fisheries on the western coast of Newfoundland, which, particularly in their connection with those of the coast of Labrador, are of primary

importance to them. It is therefore my duty to renew my remonstrances against the proceedings of His Majesty's armed ships in that quarter, and to call again Your Excellency's most earnest attention to the subject.

Whatever may be the extent of the rights of France on that coast, whether exclusive or not, they are only those of taking and drying fish. The sovereignty of the island of Newfoundland, on which She had till then possessions, was expressly ceded by the treaty of Utrecht to Great Britain, subject to no other reservation whatever but that of fishing as above mentioned on part of the coast. The jurisdiction and all the other rights of sovereignty remained with and belong to Great Britain and not to France. She has not therefore that of doing herself, on that coast, what may be termed, summary justice, by seizing or driving away vessels of another nation, even if these should in her opinion infringe her rights. Such acts of authority, which may be lawful when performed within the acknowledged jurisdiction, become acts of aggression when committed either on the high seas or any where else without the jurisdiction of the Power that permits them. No Government has more strenuously contended for that principle than that of France: none has been more justly tenacious of the rights of her merchant-ships, or has more efficaciously protected them and their flag against any supposed aggression of that nature. I may therefore appeal with confidence to Your Excellency, when, reserving entire the right to the indemnities which may be justly claimed for the injuries already sustained on that account, I beg leave to request that positive and immediate orders may be given to the officers of His Majesty's navy that the fishermen of the United States shall not be disturbed hereafter nor until an amicable arrangement shall have been made on that subject.

I request Your Excellency to accept &c.

ALBERT GALLATIN.

Mr. Gallatin to Viscount de Chateaubriand.

PARIS 2d April 1823.

SIR: The last dispatches received from my Government contain renewed and special instructions, reminding me that the fishing season for the present year is rapidly approaching, and that the proceedings of the commanders of French armed vessels in driving the American fishermen from a coast, the sovereignty of which belongs to another Power, and over which France has no jurisdiction, are an aggression, which cannot, after having been taken into serious consideration, be again renewed under the sanction of His Majesty's Government.

Having already anticipated those instructions, I can only call Your Excellency's attention to my letter of the 14th of March, and request the favor of an answer which I may be enabled to transmit to my Government.

I request Your Excellency to accept &c.

ALBERT GALLATIN.

Viscount de Chateaubriand to Mr. Gallatin.

PARIS le 5 Avril 1823.

MONSIEUR: L'objet de la lettre que vous m'avez fait l'honneur de m'adresser le 14 Mars sur les pecheries de Terre neuve a ete d'abord d'etablir qu'en vertu de l'article 13 du traite d'Utrecht, qui assure nos droits de peche sur les cotes de cette isle, aucune partie de ces droits ne pouvoit s'appliquer a la cote occidentale. Il seroit peut-etre permis, Monsieur, d'attribuer cette observation a l'inexactitude des cartes que vous auriez consultees; et je pense que des renseignemens plus precis auront pu changer sur ce point votre opinion.

Vous ne regardez plus, Monsieur, comme des actes obligatoires les traites conclus en 1778 et en 1800 entre la France et les Etats Unis; et les stipulations qui s'y trouvent sur le droit de peche, vous paroissent des lors ne plus avoir de vigueur aujourd'hui. Veuillez observer, Monsieur, que je n'ai point revoque en doute votre observation generale sur la duree temporaire de l'un et l'autre traite. Je me suis borne a remarquer que les stipulations de celui de 1778, qui etoient relatives au droit de peche, appartenant a la France, n'etoient point une concession faite a la France par les Etats Unis; mais qu'elles n'etoient de leur part que la declaration et la reconnaissance d'un droit anterieur; et que ce droit, necessairement independant des traites ou on le rappeloit ne pouvoit point tomber en desuetude avec eux. J'ai du conclure de la meme observation que ce droit subsistoit encore depuis que les traites n'existoient plus, et j'ai ajoute que le Gouvernement des Etats Unis qui l'avoit reconnu par deux traites successifs, n'avoient eu, depuis cette epoque, aucun motif pour le revoquer en doute. Je vous ai enfin prie d'observer que jusqu'a ce que cet ordre de choses eut ete modifie par un arrangement entre les deux Puissances, il devoit etre considere comme toujours subsistant, et qu'il etoit a desirer que le Gouvernement federal prit des mesures pour eviter sur l'exercice de ce droit tout conflict de jurisdiction.

La response que vous m'avez fait l'honneur de m'adresser ne me paroît point detruire les observations que je vous avois faites le 22 Janvier. J'ai recommande depuis quelque tems au Chargé d'Affaires de France pres du Gouvernement federal d'entrer avec lui en explications sur cet objet: je lui en ecris encore; et je dois me persuader, Monsieur, que les demarches qu'il est charge de faire, parviendront a escarter les mal-entendus et les inconveniens que vous paroissez craindre dans les lettres que vous m'avez fait l'honneur de m'adresser. Le Gouvernement Francois desire lui-meme qu'ils soient evites; et dans cette vue, il cherchera volontiers toutes les voies de conciliation qui pourront s'accorder avec l'exercice de ses droits.

Agreez, Monsieur, les assurances &c.

CHATEAUBRIAND.

[Translation.]

PARIS, April 5, 1823.

SIR: The object of the letter which you did me the honor to send me on March 14 regarding the fisheries of Newfoundland was in the first place to demonstrate that no part of the rights insured us on the coasts of that island by Article 13 of the Treaty of Utrecht could extend to the western coast. I may perhaps be permitted, Sir, to ascribe this observation to the inaccuracy of the maps which you have

consulted, and I believe that more accurate information will change your opinion on this point.

You no longer regard the treaties concluded between France and the United States in 1778 and 1800 as binding acts, and the stipulations therein contained with regard to fishing rights therefore appear to you to be no longer in force at present. Please observe, Sir, that I did not question your general observation regarding the temporary duration of both treaties. I confined myself to remarking that the stipulations of the treaty of 1778, which related to the right of fishing that belonged to France, were by no means a concession made to France by the United States, but merely a declaration and recognition by the latter country of a previous right, and that this right, which was necessarily independent of the treaties in which it was recalled, could by no means fall into desuetude with them. I was constrained to infer from your said observation that this right still continued after the treaties ceased to exist, and I added that the United States Government, which had recognized it in two successive treaties, had had no reason for questioning it since that time. I asked you, finally, to observe that, until this order of things was modified by an arrangement between the two Powers, it should be considered as still continuing, and that it was to be desired that the Federal Government might take measures to prevent any conflict of jurisdiction over the exercise of this right.

The reply which you have done me the honor to send to me does not seem to me to destroy the observations which I made to you on January 22. Some time ago I directed the French Chargé d'Affaires at Washington to make explanations on this subject to the Federal Government. I am writing him again on the matter, and I feel convinced, Sir, that the steps which he is instructed to take will succeed in removing the misunderstandings and inconveniences which you appear to fear in the letters which you have done me the honor to address to me. The French Government desires itself that these misunderstandings and inconveniences may be avoided, and to this end it will be glad to seek every means of conciliation which may be consistent with the exercise of its rights.

Accept, Sir, the assurances, etc.

CHATEAUBRIAND.

Mr. Gallatin to Viscount de Chateaubriand.

PARIS 15th April 1823.

SIR: I had the honor to receive Your Excellency's letter of the 5th instant on the subject of the Newfoundland fisheries.

The observation in my letter of the 14th of March last, that the obligation contracted by the United States, by the treaty of 1778, did not apply to the western coast of Newfoundland, was expressed in too general terms, and applies only to that part of the coast which extends from Cape Ray to Point Riche. However uncertain the position of this point, which I have not been able to find in any of the maps published before the treaty of Utrecht, it appears to have been understood by both parties to be somewhere on the western coast, and the right to fish between it and the Quirpon islands was therefore secured to France by that treaty. This does not however affect the main arguments used in my letter, as I reasoned on the

supposition that the treaty of 1778 was applicable to the whole western coast.

It was not denied that if France had an exclusive right to the fisheries in question prior to and independent of the treaty of 1778, that right is still in full force: but I have contended that the stipulation then entered into was not renewed by the convention of 1800, and that, if founded in error, the recognition of such right by the treaty abovementioned was at this time no more binding on the United States than any of its other conditions. I regret that my observations in that respect should have failed in producing any effect; but it is hoped that the *Chargé d'Affaires* of France at Washington has been instructed to give some answer to them and to state the grounds on which, independent of the treaty of 1778, the exclusive right claimed by her is founded.

That conciliatory means should be found which may be consistent with the exercise of its rights, is the earnest desire of the Government of the United States, as well as of that of France. It has already been explicitly stated that the forcible means to which she has resorted are an aggression on those rights. And she will neither commit her own or injure the interests of her subjects, in abstaining, with every necessary reservation, from similar proceedings, until a satisfactory arrangement shall have taken place.

I request Your Excellency to accept &c.

ALBERT GALLATIN.

Mr. Gallatin to Mr. Adams.

PARIS, 17th April 1823.

SIR: I had the honor to receive your dispatch No. 55. The instruction of the President on the subject of the Newfoundland fisheries had been anticipated; but I took that opportunity of repeating my application for an answer to my letter of the 14th of March, copy of which has already been transmitted. Copies of the short letter containing that application, of Viscount de Chateaubriand's answer dated the 5th, and of my reply of the 15th instant, are enclosed. Before writing this last, I had a conversation with the minister of marine, to whom I knew the subject to have been referred. He gave it as his opinion, in explicit terms, that France being in possession of the exclusive right of fishing on the coast in question, inasmuch as she had not before the last occurrences been disturbed in it, by the fishermen either of England or America, she had the right to retain such possession and ought to continue to exercise that right by expelling any vessels that should attempt to participate in the fisheries. Whether Viscount de Chateaubriand and the other ministers will agree in that opinion I have not yet been able to ascertain. The transfer of the negociation to Washington is, I fear, only a pretense to avoid a discussion on the main question. And you will perceive that, in the same spirit, Viscount de Chateaubriand, instead of answering the arguments contained in my letter of the 14th of March, has thought proper simply to say that my observations had not changed his view of the subject.

I have the honor to be, with great respect, Sir,

Your most obedient and very humble servant,

ALBERT GALLATIN.

Mr. Adams to Mr. Rush.

DEPARTMENT OF STATE,
Washington, June 27, 1823.

SIR: Your despatches Nos. 265 and 275, inclosing copies of your correspondence with Mr. Gallatin concerning the question which has arisen with France in regard to the right of fishing on a certain part of the coast of Newfoundland, have been duly received.

The transactions which gave rise to this controversy occurred in the years 1820 and 1821, when several fishing vessels of the United States, on the coast and within the strictest territorial jurisdiction of the island of Newfoundland, were ordered away by the commanders of French armed vessels upon the pain of seizure and confiscation. Two distinct questions arose from these incidents: one, upon the pretension of France to the *exclusive* right of fishing on that part of the coast of Newfoundland; and the other, upon the right of French armed vessels to order away vessels of the United States from places within the exclusive jurisdiction of Great Britain. In both these questions Great Britain had an interest and concern not less important than that of the United States; but the President, in the first instance, determined to address the complaint which the occasion required to the French Government alone. The motives for this forbearance were, to give the French Government the opportunity of disowning these acts of its officers, and of disclaiming any pretensions to the exclusive fishing right at the place where they had occurred, without implicating Great Britain at all in the transaction. This course of proceeding was thought to be most consistent with delicacy towards both those Governments, by avoiding towards France the appearance of recurring upon a question between her and us to the interposition of a third power, and by abstaining towards Great Britain from calling for her interference with France in a difference which might be adjusted without needing the aid of her influence. This was the reason upon which the instructions to make representations on this subject were forwarded only to Mr. Gallatin, and that until now it has never been mentioned in the instructions from this Department to you.

But the complaint to France has hitherto proved ineffectual, excepting to demonstrate that the pretensions of France to an exclusive right of fishing at the place referred to are without solid foundation, and that her intention of resorting to force to maintain this inadmissible pretension, though not yet unequivocally asserted, has been so far ascertained as to remove all scruple of delicacy with regard to the propriety of stating the case to the British Government, and calling upon them to maintain at once the faith of their treaty with us and the efficacy of their own territorial jurisdiction, violated by the exercise of force against the fishing vessels of the United States engaged in their lawful occupation under its protection.

The untenable character of the French claim and pretension has been so satisfactorily proved, as well in the correspondence between you and Mr. Gallatin as in that of Mr. Gallatin with the French Government, that it is altogether unnecessary for me to enter upon the discussion. I am not aware of anything that has escaped your attention in the development of our right to the free participation in

the fisheries at the controverted points, and from the result of your oral communications with Mr. Robinson, in the course of your inquiries relating to this affair, it is not to be doubted that the whole contest will continue to be seen in its true light by Great Britain.

Copies are herewith transmitted to you of the correspondence between Mr. Gallatin, in the execution of his instructions, with the Viscount de Chateaubriand, in which you will find all the argument that France has been able to adduce in support of her claims to the *exclusive* right of fishery. It completes the demonstration that the pretension cannot be supported. But you will see that Mr. de Chateaubriand, in his letter of the 5th of April last, while evading or abandoning the attempt of reply to Mr. Gallatin, with regard to the claim of *exclusive* fishery, says that he had *some time since* instructed the chargé d'affaires of France at this place to enter upon explanations with the Government of the United States concerning this object, and that he was then writing to him again about it. With regard to the exercise of force within the British jurisdiction the Viscount has given Mr. Gallatin no answer whatever; but Mr. Gallatin, in his letter to this Department of 17th April, states that in a conversation with the Minister of Marine, to whom he knew the subject had been referred, that minister "gave it as his opinion, in explicit terms, that France, being in possession of the exclusive right of fishing on the coast in question, inasmuch as she had not before the last occurrence been disturbed in it by the fishermen either of England or America, she had the right to retain such possession, and ought to continue to exercise that right by expelling any vessels that should attempt to participate in the fisheries." Mr. Gallatin had not ascertained whether the Viscount de Chateaubriand and the other minister concurred in this opinion of the Minister of Marine, the candor and explicitness of which must be acknowledged, but the chargé d'affaires of France here declares that he has received no instructions from his Government to give the explanations promised by the letter of Mr. Chateaubriand to Mr. Gallatin, and we should no longer be excusable for refraining from a representation of the whole case to the Government of Great Britain. The question concerning the jurisdiction belongs peculiarly to her. The documents cited by you, in your correspondence with Mr. Gallatin, show that the premises of the French Marine Minister, upon which he relies for the basis of his opinion, are as incorrect in point of fact as his conclusion is extraordinary in point of principle. The deliberate pretension to exercise force within purely British waters was unexpected on the part of France. We shall not, for the present, employ force to meet force, although that result was properly presented by Mr. Gallatin to the French Government as a consequence to be anticipated from the perseverance of their armed vessels in disturbing our fishermen. We respect the territorial jurisdiction of Great Britain in resorting to her for the effectual exercise of it to carry into execution her engagements with us.

The President desires that, in your conferences with the British Secretary of State, you will give him information of the present state of this concern between us and France. You will be careful to present it in the aspect the most favorable and friendly towards France that can be compatible with the effective maintenance of our own

rights. It is probable that there may be no such interruption to our fishermen during the present season; and the occasion appears to be highly favorable for an adjustment of it to our satisfaction. Perhaps a mutual explanation and understanding between the British and French Governments concerning it, at this time, may render any resort to other measures unnecessary. But if, on discussion of the subject between them, France should not explicitly desist from both the pretensions to the exclusive fishery and to the exercise of force within British waters to secure it, you will claim that which the British Government cannot fail to perceive is due, the unmolested execution of the treaty stipulation contained in the convention of October 20, 1818; and if the British Government admits the claim of France to *exclusive* fishery on the western coast of Newfoundland from Cape Bay to the Quirpon Islands, they will necessarily see the obligation of indemnifying the United States by an equivalent for the loss of that portion of the fishery, expressly conceded to them by the convention, which, in the supposed hypothesis, must have been granted by great Britain under an erroneous impression that it was yet in her power to grant.

I am, with great respect, sir, your very humble and obedient servant,

JOHN QUINCY ADAMS.

Hon. R. RUSH, *Envoy Extraordinary and*
Minister Plenipotentiary of the United States, London.

Mr. Rush to Mr. Adams.

LONDON, August 12, 1824.

SIR: My letter of the second of this month will have informed you that the negotiations in which I had so long been engaged with this Government had come to a close, but without any treaty or other arrangement having been concluded on any of the subjects which had been given in charge to me.

* * * * *

IV. NEWFOUNDLAND FISHERY.

This subject was thrown out of the negotiation altogether. I was not the less mindful, however, of your instructions upon it. I brought it under the notice of the British plenipotentiaries at the tenth conference. I gave them a full history of the question from its origin. I stated the grounds of complaint which the United States had against France, as shown by the bare statement of the relative rights and pretensions of the two nations to the fishery in dispute. I stated the past unwillingness of France to do us justice, and the obligations hence arising to Great Britain to interpose her friendly and efficacious offices, to the end that justice should be rendered to us. From your despatch of the 27th of June, 1823, I also stated the motives which had restrained the President until the present epoch from laying this case before the British Government—motives that I felt sure would be appreciated, and that would

increase the claims which it now had to attention. The case being wholly new until now, in any formal shape, to this Government, and being one which involves also the duties and the rights of a third power, I thought that it would be most proper not to content myself with a verbal explanation of it merely. Having, therefore, gone through with this, under the lights that your instructions and my own past investigations of the subject had afforded, I finished by delivering to the British plenipotentiaries a paper embracing a written summary of its merits, and one which might serve as a memorandum to Great Britain of the true nature of our claim. This paper consists of a synopsis of the question which I had formerly made out from Mr. Gallatin's letter to me of August the third, 1822, together with a reference to the correspondence subsequently carried on by the United States and France in relation to it. It is amongst the papers of the negotiation, marked E, and annexed to the protocol of the tenth conference. It commences with references to the different treaties—that of Utrecht in 1713, of Aix-la-Chapelle in 1748, of Paris in 1763, our own with Britain in 1783, that between Britain and France of the same year, and the treaty of Paris of 1814, also between Britain and France—all of which go to show that whilst France possessed the right of taking fish on the western coast of the island of Newfoundland, she did not possess it, as she now claims it, exclusively, but that Great Britain, the undoubted sovereign of the island, held it in common with her. It next recites the first article of the convention of the 20th of October, 1818, between the United States and Great Britain, by which the people of the United States are expressly allowed to take fish on the western coast (and on other parts) of this island, in common with the subjects of Great Britain. It then states the fact of the cruisers of France having, in the years 1820 and 1821, ordered American fishing vessels away from this coast even whilst they were within the acknowledged jurisdiction of the island, threatening them with confiscation if they refused. Finally, it concludes with pointing to the three-fold duty which devolved upon Great Britain under the emergency described: first, to make good the title of the United States to take fish on the coast in question, as stipulated by the convention of 1818; but, second, if she could not do that, to give the United States an equivalent for the loss of so valuable a right; and, third, to vindicate her own sovereignty over this island, already impaired and further threatened by the conduct of the French cruisers towards the fishing vessels of the United States within its jurisdiction. The paper subjoined copies of all the official notes that passed between Mr. Gallatin and Viscount Chateaubriand in January, February, and April, 1823, on the respective rights of the two nations to the fishery in controversy.

The British plenipotentiaries, after having this paper in their possession, and consulting, as they informed me, their Government respecting it, entered upon the matter of it at the next succeeding conference. They said that it was not their intention to controvert the title of the United States to participate with Great Britain in certain fishing liberties described in the first article of the convention of 1818. They said, too, that the United States might require a declaration of the extent of those liberties as enjoyed by British subjects under any limitations prescribed by treaty with other powers. The United States might also ask from Britain, as sovereign of the island of New-

foundland, support in the enjoyment of the liberties as so limited; but the plenipotentiaries went on to remark, that the nature of the question seemed, in their opinion, to be varied, by France having, as seen in the notes of Viscount Chateaubriand to Mr. Gallatin, placed her claim to exclude the United States from the fishery in dispute on engagements contracted by the United States with France prior to the convention of 1818, and also on the fact of the United States having opened discussions upon the whole subject with France. They further remarked, that they had understood from one of their own negotiators of the convention of 1818 that the American negotiators had been apprised at that period by Great Britain of the French right to fish on this coast. At all events, they said that, as the subject stood, they must decline entertaining it as one susceptible of being handled in any effective way at present in this negotiation. Whatever rights or remedies the United States were entitled to from Great Britain upon the occasion could be brought into view, if thought necessary, by a direct application to the British Government, in the usual form. With this intimation they would consider the subject, for so they concluded with saying, as no longer upon the list of those which it was the object of our endeavors to mould into a general treaty or convention between the two States.

I said to the British plenipotentiaries, in reply, that I had certainly not anticipated all the above avowals. I did not admit that the fact of the United States having opened a correspondence upon this subject with France could diminish in any degree their right to resort to Great Britain, remarking that it could scarcely have been expected that a forbearance on their part to hasten to this resort in the first instance, from considerations of delicacy both towards Britain and France, was now to be turned against them. Forbearance had been due to France, at first, to avoid the appearance of recurring, on a question between her and the United States, to the aid of a third power; and to Great Britain it had been due, as it was hoped that the case might have been settled without putting her upon her duty of interfering. As little did I admit the allegation of the French Government, that the United States were excluded from this fishery by their previous engagements to France, was entitled to any weight. These engagements, I said, had been taken under treaties long since expired, and the provisions of which were otherwise nugatory as to any just bearing upon this controversy. Here I adverted to the argument used by Mr. Gallatin in reply to the notes of the Viscount Chateaubriand relative to the operation of the tenth article of the treaty with France of 1778, and of the twenty-seventh article of the convention with her of 1800, arguments which completed the demonstration, as you had remarked in your despatch, that the pretension of France to an exclusive fishery was not to be supported. I admitted, as one of the American negotiators of the convention of 1818, that we had heard of the French right at that time, but never that it was exclusive. Such an inference was contradicted not only by the plain meaning of the article in the convention of 1818, but by the whole course and spirit of the negotiation, which, it was well known, had been drawn out into anxious and protracted discussions upon the fishery question. As regarded the arguments of Viscount Chateaubriand, I reminded the British plenipotentiaries that whilst part of them labored to give to obsolete treaties, as against the United States,

a validity and extent greater than they ever could have had whilst existing, the remainder went to assert a pre-existing and exclusive right in France to fish on this coast as against all the world, and, of course, as against Great Britain. Was Britain, I asked, prepared to acquiesce in this branch of the argument? for, undoubtedly, it was that which it most concerned France to establish, and without which the other branch would be of little avail to her.

The British plenipotentiaries peremptorily asserted a right in Great Britain to participate in the fishery on the coast, and denied, in this same tone, that the French right was exclusive. But having concluded to consider the subject as no longer amongst those embraced in our negotiations, they declined pursuing any further the discussion of it, leaving me to pursue such other course as I might judge applicable and expedient. My great duty having been to place the subject explicitly before this Government with a view as well to our rights as our remedies, I said to the British plenipotentiaries that the form in which I did so was not material, and that I should therefore adopt, without delay, that of addressing an official representation in regard to the whole subject to his Majesty's principal Secretary of State for Foreign Affairs. I accordingly prepared such a note to Mr. Canning, a copy of which will be found amongst the papers which I transmit, under date of the 3d of May. I do not recapitulate its contents, as they are to the same general effect with the paper which I had previously caused to be annexed to the protocol of the tenth conference. I was careful, in pursuance of your directions, to give it an aspect as friendly towards France as was compatible with duly making known the rights of the United States. I recollect nothing further that I have to communicate in explanation of this subject. The protocols in which it is mentioned are the tenth and the fourteenth. My note to Mr. Canning, considered in the light of a first formal application to this Government, is designed to bring on explanations respecting our claim between the Governments of Britain and France. These I must hope will take place, and eventuate in a manner satisfactory to the United States. I mentioned to the British plenipotentiaries the strong intimation given to Mr. Gallatin by the French Minister of Marine, that as France had, according to her own judgment, the exclusive rights of fishery on the coast in dispute, so she ought to expel from it the fishing vessels of *any* nation. But I abstained from inserting this intimation in my note to Mr. Canning. I did no more than advert to the penance of seizure directed by France against our vessels.

* * * * *

RICHARD RUSH.

[Annex 1.]

Protocol of the tenth conference of the American and British plenipotentiaries, held at the Board of Trade, March 29, 1824.

Present: Mr. Rush, Mr. Huskisson, and Mr. Stratford Canning.

The protocol of the preceding conference was read over and signed.

The American plenipotentiary entered upon the subject of the Newfoundland fishery. He stated at length the circumstances constituting the case which his Government thought it advisable to bring under the view of the British Government, and concluded by giving

in as a memorandum of his statement the paper marked E, annexed to the present protocol.

The British plenipotentiaries, after making such inquiries of Mr. Rush as they deemed conducive to a thorough understanding of the points in question, agreed to meet him again in conference on Thursday, the 1st of April.

RICHARD RUSH.
W. HUSKISSON.
STRATFORD CANNING.

E.

American paper on the Newfoundland Fishery, (Tenth Protocol.)

By the thirteenth article of the treaty of Utrecht of 1713 the sovereignty of the island of Newfoundland was ceded by France to Great Britain, France being allowed the right of fishing, and of drying fish, from Cape Bonavista, on the eastern coast, to the northern extremity of the island, and thence along the western coast to the place called Pointe Riche, but on no other ports.

The provisions of this treaty were renewed and confirmed by that of Aix-la-Chapelle of 1748, and also, as far as relates to Newfoundland and the French fisheries on its coast, by the treaty of Paris of 1763.

By the treaty of peace between the United States and Great Britain of September 3, 1783, article third, it is stipulated that "the inhabitants of the United States shall have liberty to *take* fish of every kind on such part of the coast of Newfoundland as *British fishermen shall use*, but not to dry or cure the same on that island."

By the treaty of the same date between Great Britain and France, articles fourth and fifth, the right of Great Britain to this island was confirmed, (the small adjacent islands of St. Pierre and Miquelon being excepted,) and the right of the French to fish on a certain part of the eastern coast, as above recited, was exchanged for that of fishing on the remainder of the eastern and on the whole of the western coast, as far down from the north as Cape Ray. See also the declaration and counter declaration of the plenipotentiaries of the two Governments annexed to this treaty, which are material as respects fishing rights.

By the treaty of Paris of 1814, between Great Britain and France, the former restores to the latter the colonies, fisheries, factories, and establishments of every kind which France possessed on the first of January, 1792, in the seas, or on the continents of America, Asia, and Africa, with the exception of Tobago, St. Lucie, and the Isle of France. By the nineteenth article of this treaty it is declared that, "as to the French right of fishery on the grand bank of Newfoundland, on the coasts of the island of that name, and the adjacent islands, and in the Gulf of St. Lawrence, everything shall be restored to the same footing as in 1792."

Finally, by the convention of October 20, 1818, between the United States and Great Britain, it is provided, article first, that "the inhabitants of the said United States shall have forever, *in common with the subjects of his Britannic Majesty*, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau islands, and on the

western and northern coast from the said Cape Ray to the Quirpon islands." By the same convention the United States are allowed to *dry and cure* fish on the southern part of the coast of this island, as above described, but not on the western coast.

From the preceding statement, it follows that the French have the right of taking and drying fish on the western coast of the island of Newfoundland. The United States claim for their citizens the right of *taking* fish on the same coast. But this France denies, saying that the right both of taking and drying belongs to her **EXCLUSIVELY**. Her cruisers have, accordingly, in 1820 and 1821, ordered off the American fishing vessels whilst within the acknowledged jurisdiction of the coast, threatening them with seizure and confiscation in case of refusal.

It may be that France will allege in support of her doctrine that by her treaty of September 3, 1783, with Great Britain, which gave her the right of shing and drying fish on the western coast of this island, it was intended that the right should be exclusive; that the words of the treaty, and, above all, those of the declaration annexed to it, show this to have been the meaning, as France obtained the western coast in exchange for a part of the eastern coast with a view to prevent quarrels between the French and British fishermen. To this end, as it may perhaps be also alleged, the words of the declaration provide that British subjects were not to interrupt the French fishery on this coast (the western) by their competition "in any manner;" and further provide that the "fixed settlements" which had been formed there (by British subjects it is presumed) should be removed.

The United States insist, on the other hand, that Great Britain never could have intended by her treaty of 1783 with France to grant a right of fishing, and of drying and curing fish, on the western coast of the island to French fishermen exclusively, but that the right of British subjects to resort there *in common* must necessarily be implied. That a contrary construction of the instrument cannot be received, the sovereignty of the whole island, without any exception, having been fully vested in Great Britain, and even confirmed by this very treaty. That it can never be presumed that she intended so far to renounce or in anywise diminish this sovereignty as to exclude her own subjects from any part of the coast. That no positive grant to this effect is to be found in the treaty, any more than in the treaty of Utrecht, and that the claim of France to an exclusive right, a claim so totally repugnant to the sovereign rights of Great Britain, can rest on nothing less strong than a positive grant. That all that the words contained in the *declaration* to the treaty of 1783 can be construed to mean is, that British subjects should never, whilst exercising their right, improperly or injuriously "interrupt by their competition" the *enjoyment* of the French right. Furthermore, the United States cannot suppose that Great Britain, by the convention of October, 1818, above recited, would ever have agreed that the inhabitants of the United States should have (for a just equivalent contained in the convention) the right or the liberty to take fish on the very coast in question in common with British subjects but under the conviction that British subjects had the liberty of resorting there; and if they had, the claim of France to drive away the fishing vessels of the United States cannot stand.

The above summary may serve to present the general nature of the question which has arisen between the United States and France respecting fishing rights, and which Great Britain will doubtless desire to see settled in a manner satisfactory to the United States. It is obvious that, if Great Britain cannot make good the title which the United States hold under her to *take* fish on the western coast of Newfoundland, it will rest with her to indemnify them for the loss. Another question which it is supposed will also be for her consideration is, how far she will deem it proper that France should be allowed to drive or order away the fishermen of the United States from a coast that is clearly within the jurisdiction and sovereignty of Great Britain.

AUGUST, 1822.

Since the foregoing was drawn up, and which, as will be seen, was in part hypothetical, a correspondence has taken place between the minister of the United States at Paris and the French Government, that will serve to show more distinctly the grounds upon which France claims to evict the United States from so essential a portion of their fishing rights on the coast of this island. The correspondence consists of four letters from Mr. Gallatin to Viscount Chateaubriand, dated January 22, March 14, April 2, and April 15, 1823, and two from Viscount Chateaubriand to Mr. Gallatin, dated February 28 and April 5, 1823. Copies of these letters are annexed. For the articles of the treaties (no longer, however, in force) between the United States and France, to which Viscount Chateaubriand alludes, see volume 1, of the Laws of the United States, edition of 1814, pages 80 and 131.

MARCH, 1824.

[Annex 2.]

Protocol of the fourteenth conference of the American and British plenipotentiaries, held at the Board of Trade, April 13, 1824.

Present: Mr. Rush, Mr. Huskisson, and Mr. Stratford Canning.

After the protocol of the preceding conference had been agreed to and signed, the British plenipotentiaries stated that they had invited Mr. Rush to an interview in order to inform him that, in consequence of the inquiries which they had made as to the right of fishing on the Western Coast of Newfoundland, they conceived that the case, as previously described by him, was hardly of a nature to be entertained among the subjects of the present negotiation.

The citizens of the United States were clearly entitled, under the convention of October, 1818, to a participation with his Majesty's subjects in certain fishing liberties on the coasts of Newfoundland; the Government of the United States might, therefore, require a declaration of the extent of those liberties as enjoyed by British subjects under any limitations prescribed by treaty with other powers, and protection in the exercise of the liberties so limited, in common with British subjects, within the jurisdiction of his Majesty as sovereign of the island of Newfoundland; that such declaration and protection, if necessary, might be applied for in the regular diplomatic course; but that it was to be observed that the question appeared to have been in some degree varied, first, by the line of argument

pursued in the correspondence between Mr. Gallatin and Viscount Chateaubriand, the latter having rested his claim to the right of excluding the United States from the fisheries on those parts of the coast of Newfoundland to which the above mentioned correspondence applied, upon engagements contracted by the American Government towards that of France long before October, 1818, according to his construction of which engagements the United States had virtually rendered their exercise of the liberty of fishing between Cape Ray and the Quirpon islands, conceded by Great Britain, dependent on the compliance of his most Christian Majesty; and, secondly, by the consent of the American Government to open discussions on this subject, at Washington, with the French chargé d'affaires.

The American plenipotentiary, protesting wholly against the grounds assumed by France as impairing in any degree the fishing rights of the United States, held under the convention of October 20, 1818, and not admitting that any correspondence which had taken place between the Governments of the United States and France upon this subject could affect any of those rights, remarked that his main object being to bring the question which had arisen between the United States and France fully under the notice of the Government of his Britannic Majesty, with a view to the objects stated in his paper, marked E, (annexed to the protocol of the tenth conference,) he should adopt the course of addressing an official representation upon the whole subject to his Majesty's principal Secretary of State for Foreign Affairs.

RICHARD RUSH.
W. HUSKISSON.
STRATFORD CANNING.

[Annex 3.]

Note to Mr. Secretary Canning on the Newfoundland Fishery.

LONDON, May 3, 1824.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, has received the instructions of his Government to lay before Mr. Canning, his Majesty's principal Secretary of State for Foreign Affairs, the following case:

By the first article of the convention between the United States and Great Britain, concluded at London on the 20th of October, 1818, it is, amongst other things, provided that the "inhabitants of the said States shall have forever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon islands, on the shores of the Magdalen islands, and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the straits of Belleisle, and thence northwardly, indefinitely, along the coast."

After the ratification of the above convention, the fishermen of the United States proceeded, according to its stipulations, to take fish on the western and northern coast of Newfoundland, between the limits of Cape Ray and the Quirpon islands, as aforesaid; but, in the course

of the years 1820 and 1821, whilst pursuing in a regular manner their right to fish within these limits, and being also within the strictest territorial jurisdiction of the island, these fishermen found themselves ordered away by the commanders of the armed vessels of France, on pain of seizure and confiscation of their fishing vessels.

This measure was afterwards ascertained to rest upon a claim set up by France to an *exclusive* fishery upon that part of the coast of the island—a claim conceived by the Government of the United States to be without just foundation, and in violation of the rights of the citizens of the United States, as settled by the foregoing article of the convention of 1818.

The Government of the United States forbore, at first, to make any representation of the above occurrence, so injurious to the interests as well as rights of their citizens, to the Government of his Britannic Majesty, cherishing the hope that the difficulty which appeared to have arisen would be removed on a fit representation to the court of France. A correspondence accordingly took place upon the subject between the American plenipotentiary at Paris and the Minister of Foreign Affairs of his most Christian Majesty, which, however, has not terminated in a manner satisfactory to the Government of the United States, it appearing from it that France distinctly asserts an exclusive right of fishery within the limits in question. Copies of this correspondence, consisting of four letters from Mr. Gallatin, dated the 22d of January, the 14th of March, the 2d of April, and the 15th of April, 1823, and of two letters from Viscount Chateaubriand, dated February the 28th and April the 5th, of the same year, the undersigned has the honor to inclose for the more full information of Mr. Canning. It will be seen that the United States claim for their citizens the right to *take* fish only, not to cure and dry the same, within the limits from which France would interdict them, and that their claim is in common with the subjects and fishermen of his Britannic Majesty. The undersigned has not been furnished with any affidavits or other formal proofs to substantiate the fact of the fishing vessels of the United States having been ordered away by French vessels-of-war, as above mentioned, since it will be seen, by the notes of the French Minister of State, that no question is raised upon that point, but that the fact itself is justified under a claim of right, thereby rendering superfluous all extrinsic evidence of its existence. The grounds of justification assumed by France are believed, by the Government of the United States, to be satisfactorily refuted by their plenipotentiary in the correspondence inclosed; and although France rests her claim as against the United States upon the footing of treaties once subsisting between the two powers, it will not fail to be perceived that she also asserts, in the most unqualified manner, her anterior, unlimited, and exclusive right to the fishery in question under the treaties of Utrecht and of Paris; consequently, as pre-existent to her former treaties with the United States, and paramount to all title in any other power. In the note of Viscount Chateaubriand, of the 5th of April, it is stated that the *Chargé d’Affaires* of France at Washington had been instructed to enter upon explanations with the Government of the United States concerning this interest, and was then about to be written to again on the same head; yet it becomes the duty of the undersigned to say that no adjustment of the

subject has taken place, and that the fishing vessels of the United States still remain under the interdiction put upon them by the cruisers of France.

The undersigned, in fulfilling the orders of his Government to bring under the official notice of Mr. Secretary Canning the circumstances of the above case, does so in full reliance that, through the friendly dispositions of his Majesty's Government, the whole subject will receive such attention as it will be seen to merit. The United States seek only the fair and unmolested enjoyment of the fishing rights which they hold at the hands of Great Britain under the convention of 1818, satisfied that Great Britain, whether as regards the guarantee of those rights, or the maintenance of her own sovereign jurisdiction over this island and its immediate waters, will take such steps as the occasion calls for, and above all, as are appropriate to the just and amicable intentions which it may be so confidently supposed will animate the Government of his most Christian Majesty, as well as that of his Britannic Majesty, towards the United States, touching the full rights of the latter under the convention aforesaid.

The undersigned prays Mr. Canning to accept the assurances of his perfect consideration.

RICHARD RUSH.

Right Hon. GEORGE CANNING,

His Majesty's principal Secretary of State for Foreign Affairs.

COMMERCIAL AGREEMENT OF 1830.

Mr. Van Buren to Mr. McLane.

LONDON, 20th July, 1829.

[Extracts.]

1st. The Trade between The United States and the British American Colonies. The policy of The United States in relation to their commercial intercourse with other Nations is founded on principles of perfect equality and reciprocity. By the adoption of these principles, they have endeavored to relieve themselves from the discussions, discontents, and embarrassments, inseparable from the imposition of burthensome discriminations. These principles were avowed whilst they were yet struggling for their Independence, are accorded in their first Treaty, and have since been adhered to with the most scrupulous fidelity. In the year 1815, they repealed all their Acts imposing discriminating tonnage duties on Foreign Ships or Vessels, and of impost, so far as respected the produce or manufacture of the Nations to which such Foreign Ships or Vessels might belong—such repeal to take effect in favour of any Foreign Nation which should abolish similar duties, so far as they operated to the disadvantage of The United States.

In the year 1817, they restricted the importation into The United States, in Foreign Vessels, to articles of the growth, produce, or manufacture of the Country to which such Vessels belonged, or as could only be, or were most usually, shipped in the first instance from such Country; provided that such regulation should not extend to the Vessels of any Foreign Nation which had not adopted, or should not adopt, a similar regulation with regard to them.

In the year, 1824, they declared the suspension of all discriminating duties, in relation to the Vessels and produce of several European Nations, and of their Territories in Europe, which had accepted of the terms proffered by the Act of 1815, and conferred authority upon the President to extend the same exemption to all Nations thereafter complying with its requirements; and in 1828, an Act was passed, authorizing the President to extend the exemption in regard to alien duties, which, by the Acts of 1815 and 1824, was restricted to the productions of the Country to which the Vessel belongs, to the productions of any Foreign Country imported into The United States in the Vessels of any Nation which would allow a similar exemption in favour of The United States.

The terms proposed by our Act of 1815 were adopted in the Commercial Treaty between The United States and Great Britain in the same year, which has been twice extended, and is now in full force. By it, the commercial intercourse between The United States and the British Possessions in Europe is established upon just and equal terms. The United States desired to place their trade with the

British American Colonies on the same footing. The Government of Great Britain would not then consent to that arrangement, and it was consequently stipulated in the Treaty, that the intercourse between The United States and His Britannic Majesty's Possessions in the West Indies, and on the Continent of North America, should not be affected by any of its provisions, and that each Party should remain in complete possession of its respective rights with regard to such intercourse. The trade and intercourse between The United States and the British Colonies, previous to and at that time, were only such as were permitted by British legislation, or regulation by Orders in Council. It had always been of a restricted and unequal character, and every previous attempt to place it upon just terms had wholly failed. Since 1815, both Governments have uniformly admitted it to be their belief, that a commercial intercourse between The United States and the British Colonial Possessions referred to, upon terms of fair reciprocity, would promote their mutual interests.

To establish it upon such terms has always been the sincere object of this Country, and until a very late period, the avowed wish of Great Britain.

The 12 years which have elapsed have, with occasional intermission, been employed in endeavors to arrange those terms by negotiation, or to secure them through the agency of separate legislative Enactments; and although the 2 Governments have more than once concurred in each other's views, as to the conditions to which they would assent, their respective Acts have resulted in the almost entire suppression of the trade. Since the 1st December, 1826, there has been a total non-intercourse between The United States and the British American Colonies in British Vessels, and the same in regard to American Vessels, (with the exception of the permission allowed to the latter, to carry on a direct trade with the British North American Possessions, the Bahama Islands, and the Island of Anguilla, upon terms prescribed by Great Britain alone.) The Acts of the 2 Governments which have led to this result are so intimately connected with the positions which they respectively occupy, and of a nature calculated to have so much influence on the measures of conciliation and redress which may be adopted, as to render it important that they should be fully known and accurately understood. Your participation in the public Councils has given you a general view of their principal outlines; but it is thought advisable to furnish you with a more particular exposition than the opportunities you have enjoyed would allow you to obtain. A very brief sketch of such as are most prominent is, with this view, submitted to you.

The direct trade between The United States and Great Britain was found to be so interwoven with, and dependent upon, that between The United States and the Colonies, as, in a great measure, to deprive the former of the advantages intended to be secured to them by the Treaty of 1815, so long as the intercourse with the Colonies was monopolized by British Navigators. Several efforts were consequently made, between the years 1815 and 1818, to induce the British Government to adjust this collision of interests by amicable negotiation. They were unsuccessful. In 1817, a proposition was submitted to our Minister at London by the Secretary of State for Foreign Affairs, Lord Castlereagh, which was said to contain all that

could then be assented to by Great Britain towards admitting The United States to a participation in the trade between them and the Colonies. By this it was proposed to extend to The United States the provisions of their Free Port Acts, which authorized a limited trade with portions of her Colonies to the Colonial Inhabitants of Foreign European Possessions, in Vessels of 1 deck, with some additional provisions in relation to the trade with Bermuda, Turks Island, and the British Territories in North America.

The terms contained in this proposition were decided by the Government of The United States to be inadmissible, and countervailing measures were resorted to.

The Act of Congress of the 18th of April, 1818, concerning navigation was passed. Its object was to counteract Acts of a like character long before existing on the part of Great Britain restrictive of the trade with her Colonies in Vessels of The United States. By that Act, the Ports of The United States were closed against British Vessels coming from any British Colony, which was, by the ordinary Laws of navigation and trade, closed against Vessels of The United States; and British Vessels sailing with cargoes from Ports of The United States were laid under Bonds to land their Cargoes in some Port or place other than a Colony closed against Vessels of The United States.

The negotiation was in the same year renewed, and another attempt, equally unsuccessful, was made to open the trade, and establish it upon principles which were claimed by our Government to be those of fair reciprocity.

The Act of Congress of the 15th of May 1820, supplementary to an Act entitled "An Act concerning Navigation," followed. By it, the Ports of The United States were, after a certain day, closed against British Vessels coming or arriving by sea from any British Colonial Port in the West Indies or America; and similar Bonds were required from British Vessels sailing from the Ports of The United States, not to land their Cargoes in any British American Colony. Articles of British West Indian and North American produce were allowed by this Act to be imported into The United States, only direct from the Colony of which they were wholly the produce, growth, or manufacture. Thus establishing a non-intercourse in British Vessels with all the British American Colonies, and prohibiting the introduction into The United States of all articles the produce of those Colonies, except that of each Colony imported directly from itself.

Such was the relative state of the intercourse between The United States and the British Colonies, respectively, from September 1820, till the passing of the Act of Parliament of the 24th June, 1822, and the consequent Proclamation of the President.

By the Act of the 6th of May, 1822, in anticipation of the passage of the British Act last referred to, Congress authorized the President, upon his being satisfied that the British Colonial Ports were opened to the Vessels of The United States, to open their Ports to British Vessels, upon terms of reciprocal advantage. The Act of Parliament of June, 1822, repealed several existing Acts, and opened certain of the Colonial Ports to the admission of American Vessels laden with certain articles of American produce, upon specified conditions, and restricting the intercourse to the direct trade between The United States and the Colonies. The President, by his Proclamation, issued

immediately after the receipt of the British Act, opened the Ports of The United States to British Vessels engaged in the Colonial trade, subject to a like restriction, and upon terms which were deemed to be of reciprocal and equal advantage, but retaining our discriminating duties. The retention of the discriminating duties was made the subject of complaint and discussion on the part of the British Government. The measure was justified by ours, as being only a fair equivalent for the imposition of protecting duties on American produce in all, and export duties in some, of the Colonies.

The King had authority, by Act of Parliament, to interdict the trade to all Nations which refused to allow privileges to British Vessels engaged in the Colonial trade, equal to those granted to Foreign Vessels by the Act of the 24th June, 1822, and, also, to impose countervailing duties; but neither power was then exercised.

The Act of Congress of the 1st of March, 1823, was the next material step in the movements of the 2 Governments. At the period of its passage the 2 Countries were engaged in an extensive and valuable trade between The United States and the Colonies, by virtue of the British Act of Parliament and the President's Proclamation, our discriminating duties remaining unrepealed, but continuing to be a cause of complaint on the part of Great Britain.

The influence which the passage of this Act has obviously had upon the course of affairs in relation to the trade in question, together with the circumstance that the closing of our Ports was the effect of its terms, renders it important that its provisions should be distinctly understood. They were in substance the following.

1st. It continued the suspension of the Act of 1818 and 1820, already effected by the President's Proclamation, and opened our Ports to a direct trade only with such of the British Colonial Ports as had been opened to us by the Act of Parliament of June, 1822, subject, as things then stood, to the payment by British Vessels of our alien or discriminating duties.

2ndly. It put forth a claim which had been previously advanced by us in our Negotiations upon the subject, but always resisted by Great Britain, viz; that no higher duties should be imposed upon the productions of The United States in the British Colonial Ports than upon those of Great Britain herself, or her other Colonies, and which had been levied for the protection of their own produce. This was done by giving an authority to the President to suspend the payment of our discriminating duties by British Vessels coming from the Colonies, upon being satisfied that no such duties were levied in the Colonies on our produce, and by declaring that, until such evidence was given, payment should continue to be exacted.

3rdly. It restricted the trade to such British Vessels as had come directly from the Colonial Ports, and had not touched at any other Port after they left the Colony.

4thly. It declared that its provisions should only be in force so long as the privileges granted by the Act of Parliament of June, 1822, were allowed to our Vessels, and that if at any time thereafter, the trade, or any part of it, was prohibited to us by Great Britain, through an Act of Parliament or Order in Council, and that the fact proclaimed by the President, each and every of its provisions should cease, and the Acts of 1818 and 1820 be revived and in full force.

The passage of this Act was followed by the exercise of the authority given to the King to impose countervailing duties; and they were accordingly imposed to an amount equal to ours, by an Order in Council of the 21st of July, 1823, upon all American Vessels and their Cargoes arriving in the Colonial Ports. Under these reciprocal impositions, the trade between The United States and the Colonies was carried on from that time, until it was suppressed by both Governments, in the manner hereinafter stated.

The negotiation was resumed by Mr. Rush in January, 1824. In its course, propositions for regulating the trade were submitted by him, which received the assent of the British Plenipotentiaries, with the exception of that prohibiting the imposition of protecting duties in the Colonies, to which their dissent was expressed in the strongest terms.

Mr. Rush's Instructions precluded him from settling the matter upon any other terms, and the Negotiation was suspended in the month of June following.

On the 5th of July, 1825, an Act of Parliament was passed, allowing the trade with the British Colonies in North America and the West Indies to all foreign Nations, upon conditions which will be hereafter referred to. It limited the privileges thus granted to Foreign Vessels to the Ships of those Countries, not having Colonies, which should place the commerce and navigation of Great Britain, and her Possessions abroad, upon the footing of the most favoured Nation, unless the King, by Order in Council, should in any case deem it expedient to grant the whole or any of such privileges to the Ships of any Foreign Country, although the required condition was not in all respects complied with by such Country.

Mr. King was sent to England in the summer of 1825, but without instructions upon this point. His continued indisposition induced him to return in the summer of 1826, and during that period no step was taken by either Government.

In the winter of 1825-6, an attempt was made in Congress to meet the Act of Parliament of July, 1825, by correspondent legislation; but it failed; and although the Trade might, and most probably would, have been saved, if the Act then introduced had become a Law, it is nevertheless true, as has been stated, that it would not have been a strict compliance with the British Act, if it had passed.

In the summer of 1826, Mr. Gallatin was sent to England with instructions, which authorized him to conclude an arrangement of the Colonial Question upon terms substantially the same with those which were offered by the British Plenipotentiaries to Mr. Rush in 1824; but his authority was confined to an adjustment by Treaty stipulation.

On the 27th of July, 1826, the King, by Order in Council, founded upon the Act of Parliament of July, 1825, declared that the United States had not complied with the conditions of the Act, and therefore directed that the Trade and intercourse between the United States and the greater part of the British Colonial Ports should cease from and after the first day of December then following.

Mr. Gallatin arrived in England a few days after the publication of those Orders in Council. The determination of the British Government to decline all further negotiation upon the subject was

promptly and definitively announced to him. The foundation of this determination was avowed to consist principally in the reiterated refusals of this Government to accept of the only terms to which Great Britain would agree, and a subsequent change of the Colonial policy of that Government, by opening her Colonial Ports to all Foreign Nations upon the conditions set forth in their Acts of Parliament. The whole subject was laid before Congress by the President in the winter of 1827, and an unsuccessful attempt made to obtain the passage of a Law requiring our Ports to be closed also. Congress having adjourned without doing anything in the matter, the President, by his Proclamation dated the 17th day of March, 1827, declared the trade between The United States and all the British Colonies, with which it had been allowed by the Act of Parliament of 1822, to be prohibited, and the Acts of Congress of 1818 and 1820 to be revived.

On the 16th of July, 1827, another British Order in Council was issued, embracing the regulation of the Colonial trade of Great Britain with all Nations; reciting the passage of an Act of Parliament, by which it was declared that one Year from the time of passing the Act of July, 1825, should be the period in which an acceptance of its provisions by Foreign Nations should be valid; declaring what Nations had so accepted the same, and closing their Ports against all those that had not; among the latter, The United States were included.

The extent and operations of our Acts of 1818 and 1820 have been before stated. The commercial relations between the United States and the British Colonies have been regulated by their provisions, and the British Order in Council of July, 1827, from that period to the present day. By instructions from this Department of the 11th of April, 1827, Mr. Gallatin was authorized to announce to the Government of Great Britain the acquiescence of this, in the proposition that the Colonial Trade should be regulated by Law, and to ascertain the disposition of the British Government to open the Trade by separate Acts of Legislation. This was distinctly done by Mr. Gallatin, in his Note to Lord Dudley of the 4th of June, 1827. He was further informed that the President was willing to recommend to Congress, at its next Session;

1st. To suspend the alien Duties on British Vessels and Cargoes, and to allow their entry into our Ports with the same kind of British Colonial produce as may be imported in American Vessels—the Vessels of both Countries paying equal charges.

2d. To abolish the restrictions in the Act of 1823 to the direct intercourse between The United States and the British Colonies, thus leaving Great Britain in the exclusive possession of the circuitous Trade between Great Britain proper through her Colonies; and he was directed to inquire whether the passage of an Act of Congress to that effect would lead to the revocation of the Order in Council of July, 1826, to the abolition of the discriminating Duties on American Vessels in the British Colonial Ports, and to the enjoyment of our Vessels of the advantages offered by the Act of the 5th of July, 1825. The effect of these concessions, it was pointed out to him, would be a waiver of the claim of The United States, as made in the Act of March, 1823, to the admission into the Colonial Ports of our produce,

upon the payment of the same Duties as similar produce from other parts of the British Possessions was required to pay.

No answer was made by the British Government to Mr. Gallatin's Note of the 4th of June, 1827, announcing the willingness of this Government to arrange the Trade by separate legislation; and Mr. Canning, on being applied to by Mr. Gallatin to know whether he might expect a reply, informed him that such was not the intention; that they considered that Note as merely furnishing explanations; and he expressed his surprise that any doubt could exist as to the final disposition of the British Government upon that subject.

After Mr. Canning's death, the willingness of The United States to accept, through the medium of separate legislation, the terms of the Act of Parliament of the 5th of July, 1825, was again communicated by Mr. Gallatin to the British Government, by a Note to Lord Dudley of the 17th August, 1827, in which he requested to be informed whether, if Congress complied with the recommendations which the President was willing to make, The United States would be admitted to the Trade and intercourse by the Act of Parliament of the 5th of July, 1825.

Mr. Huskisson, in a subsequent Conference, informed Mr. Gallatin that Great Britain considered the Colonial intercourse as exclusively under her control, and that whatever terms might be granted to Foreigners, would be considered as an indulgence; that he was not prepared to say whether, in any way, or, if at all, on what terms, it would be opened to The United States, in case of their repealing their restrictive Acts.

Lord Dudley, in reply to Mr. Gallatin's Letters of the 4th June and 17th August, after reviewing the grounds urged by The United States to justify themselves in omitting to accept the terms of the Act of Parliament of July, 1825, declined committing the British Government as to their course, in the event of The United States adopting the measures proposed, on the following grounds, viz; 1st. that much must of necessity depend upon the details of the Act which Congress might pass; 2dly, more on the condition of the Country at the time of the passage, and the views which the British Government might then have of their interest in the matter; and 3rdly, that any stipulations on the subject, would be a virtual departure from the ground taken by his Government to regulate the Trade by Law, and to decline all further negotiation concerning it.

The last information in the possession of this Government, in relation to the views of the present British Ministry upon this subject, is derived from Mr. Barbour in January last. He states that, in a communication held with Lord Aberdeen, in the presence of the Duke of Wellington, the former expressed his desire of having the Colonial Trade Question judiciously adjusted, and his conviction that the interdict was injurious to the Colonies, without a proportionate benefit to any other section of the Empire. But from subsequent conversation with his Lordship, and from information derived from other sources, Mr. Barbour was induced to believe that the British Government does not contemplate any relaxation of its Colonial system in favour of this Country: that our late Tariff, together with a strong conviction of their incapacity to compete upon equal terms with our navigation, contributes to this disposition; and

that that Government would willingly withdraw the privileges of trading with its Colonies, which it has granted to other Nations, if that could conveniently be done.

Such is the present state of our Commercial Relations with the British Colonies; and such the steps by which we have arrived at it.

In reviewing the events which have preceded, and more or less contributed to, a result so much to be regretted, there will be found three grounds upon which we are most assailable; 1st, in our too long and too tenaciously resisting the right of Great Britain to impose protecting duties in her Colonies; 2dly, in not relieving her Vessels from the restriction of returning direct from The United States to the Colonies, after permission had been given by Great Britain to our Vessels to clear out from the Colonies to any other than a British Port; and 3dly, in omitting to accept the terms offered by the Act of Parliament of July 1825, after the subject had been brought before Congress, and deliberately acted upon by our Government. It is, without doubt, to the combined operation of these causes, that we are to attribute the British interdict. You will therefore see the propriety of possessing yourself fully of all the explanatory and mitigating circumstances connected with them, that you may be enabled to obviate, as far as practicable, the unfavourable impression which they have produced.

The trade, though not wholly suppressed, is altogether changed in its character. Instead of being direct, active, and profitable, as it once was, it is circuitous, burthensome, and comparatively profitless. The importation of the produce of the British West India Colonies into The United States, may be said to have substantially ceased. It is wholly prohibited in British Vessels, and allowed only direct from the producing Colony. By the Orders in Council, the admission of American Vessels is prohibited. Consequently, whatever of British West India produce is brought into this Country (with the exception of what has been recently allowed to be imported from the Bahama Islands, and the Island of Anguilla) must either be brought by the Vessels of other Nations, which are permitted, under the Act of Parliament of July, 1825, to clear from the Colonies for any other Ports, except in Great Britain and her Possessions, or it must be imported as the growth or produce of other Colonies, to which the Vessels of The United States are admitted, and thus introduced in evasion of our Law.

The export trade has been more considerable, though greatly and injuriously reduced. The decrees of nature, by which the British West Indies are made dependent on The United States for a great portion of their necessary supplies, though erroneously resisted, have not been altogether frustrated by the retaliatory and improvident Legislation of the 2 Countries. Large quantities of American productions still find their way to the Colonies. The uncertainty as to how much of our produce is used in the Ports to which the exportations are nominally made, renders it impossible to speak with accuracy as to the amount actually consumed in the British West India Colonies since the Ports were closed. In the opinion of intelligent merchants, it is about half as much as immediately before the interdict. It is carried in American Vessels to the Islands of St. Thomas and St. Bartholomew on the one hand, and to the open Ports in the

British North American Possessions on the other. From those Ports, it finds its way to the British West India Colonies, under different regulations in British Vessels. This trade is burthened with double freight and insurance, the charges of landing and re-shipping, and also Commissions and duties in the Neutral Ports, for that portion which goes by the way of St. Thomas and St. Bartholomew. The extra expenses thus produced have been estimated at 50 per centum on the first cost of lumber, and at from 15 to 20 per centum on provisions. A great reduction of the quantity of our exports, and the entire exclusion from the trade of many articles of a perishable nature, which cannot now be sent in consequence of the increased length of the voyage, with its unfavorable effects upon our Navigation, are the chief injuries which result to our Citizens from this state of things. It oppresses the West India Planter, by unavoidably increasing the prices of such articles of American produce as he still finds it his interest to purchase, notwithstanding the disadvantages imposed upon their introduction. It is moreover understood, that the indirect trade is carried on on British account, and that, therefore, the principal part of the extra expenses to which it is subjected comes ultimately out of their pockets.

It is the anxious wish of the President to put an end to a state of things so injurious to all parties. He is willing to regulate the trade in question upon terms of reciprocal advantage, and to adopt for that purpose those which Great Britain has herself elected, and which are prescribed by the Act of Parliament of 5th July, 1825, as it is understood by us. You are directed to make a full and frank exposition of the views and wishes of the President in this respect, at as early a period, and in such manner, as you may judge best calculated to accomplish them, and to put it in his power to communicate the result of this overture to Congress at the opening of the next Session. He is admonished by the past of the inutility of protracted discussions upon a subject which has been over and over again debated. He does not, therefore, wish to occupy you, or harrass the British Cabinet by their repetition. You are authorized to say to the British Government on the part of The United States, that they will open their Ports to British Vessels coming from the British Colonies, laden with such Colonial productions as can be imported in American Vessels, and upon terms in all respects equally favourable; and that they will also abolish the restriction contained in our Act of 1823, confining the trade to a direct intercourse, upon condition that Great Britain will allow American Vessels the privileges of trade and intercourse which were offered by the Act of the 5th of July, 1825.

The President indulges a confident expectation that the British Government will assent to an adjustment upon these terms. He is compelled to think so from a conviction that such an arrangement would promote the true interests of both Parties—a result which he is confident is as much desired by Great Britain as it can be by himself, because she has heretofore given her deliberate assent to these terms, (and he finds nothing in the condition of the question which renders them less proper now than they were then;) and, finally, because he is unwilling to believe that Great Britain would make so invidious a distinction as to exclude us from a trade which

she allows to the rest of the commercial world. The United States do not controvert her right to monopolize the trade with her Colonies; and if the same interdict which excludes them from her Colonial Ports was extended to others, they would not complain. But the British Government cannot be insensible to the tendency which a discrimination of the character referred to must unavoidably have, to alienate those liberal and friendly feelings now entertained towards her by our People, and which it should be the pleasure, as it is the duty, of both Governments, to cherish and perpetuate.

If the omission of this Government to accept of the terms proposed when heretofore offered, be urged as an objection to their adoption now, it will be your duty to make the British Government sensible of the injustice and inexpediency of such a course.

The opportunities which you have derived from a participation in our Public Councils, as well as other sources of information, will enable you to speak with confidence (as far as you may deem it proper and useful so to do) of the respective parts taken by those to whom the administration of this Government is now committed, in relation to the course heretofore pursued upon the subject of the Colonial trade. Their views upon that point have been submitted to the People of The United States; and the counsels by which your conduct is now directed are the result of the judgment expressed by the only earthly tribunal to which the late Administration was amenable for its acts. It should be sufficient that the claims set up by them, and which caused the interruption of the trade in question, have been explicitly abandoned by those who first asserted them, and are not revived by their successors. If Great Britain deems it adverse to her interests to allow us to participate in the trade with her Colonies, and finds nothing in the extension of it to others to induce her to apply the same rule to us, she will, we hope, be sensible of the propriety of placing her refusal on those grounds. To set up the acts of the late Administration as the cause of forfeiture of privileges which would otherwise be extended to the People of The United States, would, under existing circumstances, be unjust in itself, and could not fail to excite their deepest sensibility. The tone of feeling which a course so unwise and untenable is calculated to produce would doubtless be greatly aggravated by the consciousness that Great Britain has, by Order in Council, opened her Colonial Ports to Russia and France, notwithstanding a similar omission on their part to accept the terms offered by the Act of July, 1825.

You cannot press this view of the subject too earnestly upon the consideration of the British Ministry. It has bearings and relations that reach beyond the immediate question under discussion.

Should the amount of our protecting duties upon the productions of her Colonies, or upon the manufactures of the Mother Country, be referred to, in connexion with this matter, you will be at no loss for the reply. The duties upon our agricultural productions when imported into Great Britain, are beyond comparison greater than those imposed by The United States on the productions or manufactures of Great Britain or her Colonies; and the denial of her right to impose duties on articles the production of The United States, when imported into the Colonies, in order to protect those of the Colonies themselves, or of the Mother Country, was a leading and

avowed motive for the stand taken by Great Britain in relation to the Colonial trade. This is a subject on which each Nation must judge for itself. It is one upon which, it is well known, there exists great diversity of opinion among our own Citizens, but in respect to which no stipulations can be made with a Foreign Power; at least without reciprocal engagements on the part of such Power-engagements into which there is no reason to believe that the Government of Great Britain would at this time enter. If by the imposition of those duties, The United States can secure the production of the same articles at home, it is their right and their duty to persevere. If not, the principal burthen falls upon their own Citizens, and consequently furnishes no cause of complaint on the part of others.

If the encouragement, by Great Britain, of her North American Possessions in the growth and production of similar articles to those with which we supply her West India Colonies, is the motive, the objection is no less obvious. To that end, the parent Government now exercises, without complaint or objection on our part, the common right of imposing higher Duties on articles which are not, than on those which are, the growth or produce of their North American Possessions; and in doing so she exercises to the full the right conceded to all Nations, of encouraging home productions, by the imposition of protecting Duties. The exclusion of one Nation from the privilege of bringing into the Ports of another, articles that come in competition with home productions, whilst their introduction is conceded to the rest of the World, is a measure which cannot find its justification in any principles applicable to the protective system. If, however, the President should be disappointed in his expectations, founded on these and other corresponding views of the subject, he wishes you to ask (a request which he is confident will be readily granted) that you may be favored with an early and definitive answer to the propositions you are authorized to submit. He makes this appeal to the candor of the British Government, that he may be enabled (in the event alluded to) to lay before Congress, at the commencement of the next Session, the result of this overture, to the end that that portion of the capital and enterprise of our Country which is now waiting the decision of the question may seek other channels of employment. Should your advances be met in the spirit in which they are offered, it will become important to consider of the form in which the proposed adjustment ought to be made.

This Government has heretofore strenuously contended for an arrangement by Treaty, and that of Great Britain has as strenuously opposed any other mode than that of separate legislation. The President is willing to adopt either mode. If the views of the British Government are now different in that respect, and an arrangement by Treaty be acceptable, you are authorized to conclude it upon the principles of these Instructions. In that event, the President relies upon your known discretion and intelligence that the Articles to which you agree shall be in such form as will carry into full and fair effect the views of this Government as now expressed.

If, (which is more probable) a resort to mutual legislation is preferred, the consideration of the mode best calculated for the satisfaction of both parties will occupy your attention.

That may be effected in one of two ways, viz; either by an Order in Council, opening the British Ports to American Vessels after a

certain day, in the event of the United States having before that time complied with the conditions of the Act of Parliament of the 5th of July, 1825; by opening our Ports to the admission of British Vessels, and allowing their entry with the same kind of British or Colonial produce as may be imported in American Vessels, the Vessels of both Countries paying the same charges; by suspending the alien Duties on British Vessels, and Cargoes; and by abolishing the restrictions in our Act of 1823 to the direct intercourse between The United States and the British Colonies—thus leaving Great Britain in possession of the circuitous Trade between Great Britain proper and The United States, through the British Colonies. Or, the President will recommend the same measures to Congress, at their next Session, on being assured by the British Government that the passage of an Act of Congress to that effect will lead to the revocation of the British Order in Council of July, 1827, to the abolition or suspension of all discriminating Duties on American Vessels in the British Colonial Ports, and to the enjoyment by us of the advantages of the last mentioned Act of Parliament.

You are authorized to agree to either mode, but the former is, for many reasons, to be preferred. In all that is said upon the subject, it must be borne in mind that the President, whatever may be his wishes, or the course he might otherwise adopt, has no authority to move in the matter without the aid of Congress. The only Laws relating to this subject, now in force, are the Acts of 1818 and 1820, by virtue of which our Ports are closed against the admission of British Vessels engaged in the Colonial Trade. They do not confer a dispensing power on the President, and he has no such authority derived from any other source.

Some explanatory Act, or a Stipulation having a prospective view to such provision as Congress may make, will certainly be necessary to enable The United States to avail themselves of the privileges offered by the Act of Parliament of 1825. By that Act we are required, as a condition to the enjoyment of its advantages, to place the Commerce and Navigation of Great Britain and her Possessions abroad upon the footing of the most favoured Nation. If it is meant by the condition that the Commerce and Navigation of Great Britain, and of her Possessions abroad, shall be gratuitously and generally placed on the same footing, with those of the more favoured Nation, by granting to them privileges which are allowed by us to other Nations for equivalents received, it would be wholly inadmissible.

By the Laws of both Countries, the Vessels of each are prohibited from importing into the Ports of the other any other productions than those of the Country to which such Vessels respectively belong. By the Laws of The United States, this restriction is applied only to those Countries which apply a similar interdict to our Commerce. Almost all other Countries have excluded it from their Navigation Codes: such Nations, therefore, enjoy the privilege of importing from any Country upon paying our alien Duties—a privilege which we cannot extend to Great Britain, because her Laws deny it to us.

Our discriminating Duties, also, have, in consequence of arrangements by Treaty, been abolished as to certain Nations, and their Vessels and Cargoes admitted on equal terms with those of The United States. We have, moreover, Treaties with Central America and Denmark, by which it is stipulated that whatever can be im-

ported to, or exported from, either Country, from or to any Foreign place, in its own Vessels, may be so imported or exported in the Vessels of the other Country, on the payment of the same Duties. Should the terms "most favoured Nation" be understood by Great Britain in the sense I have referred to, she would entitle herself, in case of a literal compliance on our part with the terms of the Act of 1825, to all those privileges for her European Navigation and Commerce, without reciprocating them to The United States—a privilege she would, it is hoped, be too just to desire, and which, certainly, The United States could not for a moment think of granting. The force of these objections, and the necessity of preliminary explanations upon this head proceeding from the British Government, was virtually admitted by Lord Dudley, in his reply to Mr. Gallatin's Notes of the 4th of June and 17th of August, 1827; but he considered them as answered by the statement of Mr. Gallatin, that the President was willing to recommend certain specific measures to Congress, as a fulfilment of the conditions of the Act of 1825, and the President would have adopted them himself if he had been clothed with authority to that effect.

The simple and sufficient reply to this view of the matter is, that those measures were proposed by The United States, not as a strict compliance with the conditions required, but as all that they could offer, and with an accompanying declaration that they fell short of what the Act of 1825 required, and would still leave our Commerce with the Colonies dependent upon the future dispensation of the British Government. The validity of this opinion Lord Dudley did not attempt to controvert.

If it is then true that either further preliminary legislative Acts, of a prospective stipulation on the part of Great Britain, be necessary, a previous Order in Council should be preferred: First, because it would obviate the two principal objections stated by Lord Dudley to her binding herself for the future. Those objections were, that the future course of Great Britain must, necessarily, in part, depend upon the details of such Act as Congress might pass; and that the very fact of making such a stipulation would be a departure from a ground which their Government had taken upon full deliberation,—that they would not suffer themselves to be drawn into any negotiation upon the subject of the Colonial Trade, but claimed for themselves the right to regulate it by their own separate and independent legislative Acts. The mode proposed would manifestly obviate the first objection, and avoid the other. Secondly, because such an act on the part of Great Britain, after the past transaction of the two Governments on this subject, could not fail to remove all asperities from the minds of our People, and contribute more than an adjustment in any other form to produce that spirit of mutual kindness between the 2 Countries which it is the interest of both to cherish, and which the President is earnestly solicitous to maintain.

Assuming that the step can be taken by Great Britain (as it assuredly can) without disparagement, the consideration stated would, it is believed, have a persuasive influence on her conduct. In issuing such an Order in Council, the British Government would only be acting upon the same policy which it has in part already pursued in relation to the Bahama Islands and the Island of Anguilla. Great Britain revoked her Order in Council of July, 1827, as to those

Islands, because it was required by a due regard to her interests. That being ascertained, no consideration of form or matter of feeling was allowed to interfere. What good reason can be assigned why the same should not be done for the maintenance of greater interests, and under more eligible circumstances? Should that mode, however, be declined, it is hoped that the only remaining one will be adopted without hesitation.

I will add nothing as to the impropriety of suffering any feelings that find their origin in the past pretensions of this Government to have an adverse influence upon the present conduct of Great Britain.

Without such an assurance on her part, your Mission, so far as relates to the Colonial Trade, must be wholly inoperative. If this result is produced by a real change of opinion on the part of the British Ministry, with respect to the reciprocal advantages of the Trade, and a determination to exclude The United States from it, in order to promote her own interests, and that is frankly and promptly avowed, the whole matter will be at least intelligibly concluded. If, however, they are not prepared to take this ground, but suffer themselves to desire that The United States should, in expiation of supposed past encroachments, be driven to the necessity of retracting their legislative steps, without knowledge of its effect, and wholly dependent upon the indulgence of Great Britain, they cannot be insensible of the extreme improbability that any further measure will be taken by Congress, before whom (in the event alluded to) it would probably be the pleasure of the President to lay the whole matter.

M. VAN BUREN.

LOUIS McLANE, Esq.

Mr. McLane to the Earl of Aberdeen.

9 CHANDOS STREET, CAVENDISH SQUARE,
12th December, 1829.

My LORD:

I had flattered myself with the hope of receiving, before this time, a decisive Answer from His Majesty's Government to the Propositions which I had the honour to make, some time since, for an arrangement of the Trade between The United States and the British American Colonies; but while I regret the delay that has taken place, I am aware that it has hitherto been unavoidable. In the hope, however, that, after the various conversations which I have had the honour to hold with His Majesty's Ministers in the course of this Negotiation, they may be prepared definitively, to dispose of the subject, I beg leave to make your Lordship the present Communication.

In entering upon the Negotiation, I separated this from the other objects of my Mission, and presented it, singly, before His Majesty's Ministers, that it might receive their early consideration, and prompt decision; and that I might thereby the better promote the views and wishes of my Government. I early informed your Lordship of the anxious desire of the President of The United States, that this question may be put, immediately and entirely, at rest. In this he is influenced, not merely by a wish to liberate and give activity to such

portion of the capital of his Fellow-citizens as may be awaiting the decision of this question, but also by the higher motive of speedily terminating a state of things daily becoming more prejudicial to the friendly relations of the two Countries.

Disclaiming, on the part of The United States, in reply to certain observations of your Lordship, all hostility to this Country, in their system of protecting Duties, and disconnecting that system from any arrangement of this particular question, I endeavored to lay this subject before His Majesty's Ministers, divested of all considerations but such as peculiarly relate to this branch of the commerce between the two Nations.

Conceiving that experience had already proved the existing Colonial Regulations to be injurious to the interests of both Countries, the President was induced to hope, that true policy alone would dispose His Majesty's Government to change them. He could perceive no good reason why Great Britain should now refuse her assent to the terms of arrangement which she herself had, heretofore, voluntarily proposed; and, as the Order in Council of July, 1826, did not embrace Russia and Sweden, though both were within the scope of the Act of 1825, and as it had been subsequently rescinded as to Spain, without equivalent, he was unwilling to suppose that any unfriendly motive could induce a peculiar and permanent exclusion of The United States from the participation in a trade thus conceded to the rest of the World.

In fact, it appeared that a material alteration had taken place in the Colonial System, and in the relations between the two Countries; produced by the recent relaxation of the Order in Council in favour of Spain, which left The United States the sole excluded Power; and by the injurious operation of the existing Regulations upon the interests of Great Britain. It was not unreasonable, therefore, to suppose, that the Negotiation might be advantageously resumed; that the British Government might be induced to rescind, entirely, their Order in Council of 1826, and that a satisfactory arrangement might immediately be made by the reciprocal Acts of both Governments.

In the course of my Negotiations, however, I have met with difficulties much greater than had been anticipated. There were objections opposed to any arrangement. Among them were the measures of The United States, restricting the British Colonial Commerce, subsequently to their failure to accept the terms offered by the Act of Parliament of 1825; and the Claims to protection urged by those interests, which are supposed to have grown up in faith of the Act of 1825, and the Order in Council of 1826. Indeed, I distinctly understood that these were insuperable obstacles to any relaxation in the Colonial System of Great Britain, unless some previous change should be made in the Legislation of The United States.

With this understanding, though I by no means admitted the force of these objections. I deemed it expedient, in this state of the Negotiation, to make the following Proposition:

That the Government of The United States should now comply with the conditions of the Act of Parliament of July 5th, 1825, by an express Law, opening their Ports for the admission of British Vessels, and by allowing their entry, with the same kind of British Colonial produce as may be imported in American Vessels, the Vessels

of both Countries paying the same charges; suspending the Alien Duties on British Vessels and Cargoes; and abolishing the restrictions, in the Act of Congress of 1823, to the direct intercourse between The United States and the British Colonies; and that such a Law should not be immediately followed by a revocation of the British Order in Council of the 27th of July, 1826; the abolition or suspension of all discriminating Duties on American Vessels in the British Colonial Ports; and the enjoyment, by The United States, of the advantages of the Act of Parliament of the 5th of July, 1825.

By this offer on the part of my Government, I hoped to remove even the pretence of complaint against its measures; and I trusted that, in thus throwing open, by its own act, to all of His Majesty's Subjects, a trade at present enjoyed by but a few, it would effectually silence those partial interests, which, springing out of a system of restriction, and depending as much upon the countervailing Laws of The United States, as upon the Regulations of their own Government, subsist entirely upon the misfortunes of the British West India Planters, and their embarrassments of the general commercial capital and enterprize of both Nations.

In repeating the Proposition, as I now have the honor to do, and in renewing my solicitations, that it may be taken into early and candid consideration, and produce a prompt and favourable Reply, I refrain from leading to further discussion and delay, by a more detailed reference to the various suggestions by which, in the course of the Negotiation, I have had the honour to recommend it.

Entertaining, however, the conviction I have heretofore expressed, of the wasting effects of the present Regulations upon the substantial interests of the two Countries, I cannot close this Letter, without again remarking, that delay can only tend to increase the difficulties, on both sides, to any future adjustment; and that it will be difficult for The United States to reconcile the marked and invidious relation in which they are now placed, with their idea of justice, or with the amicable professions of this Government. That relation involves consequences reaching far beyond the immediate subject in discussion, and of infinitely greater importance to the future intercourse of both Countries than any value which the trade, affected by these Regulations may be supposed to possess. It is this view of the subject which unites the sympathy of all interests in The United States with their commercial enterprize, which touches the pride and sensibility of every class of their Population, and which, I trust, will make its due appeal to the candour and liberality of His Majesty's Government.

I pray your Lordship to accept, &c.

LOUIS M'LANE.

The Rt. Hon. the EARL OF ABERDEEN, K. T.

Mr. McLane to the Earl of Aberdeen.

9 CHANDOS STREET, PORTLAND PLACE,
16th March, 1830.

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, in calling the attention

of the Earl of Aberdeen, His Majesty's Principal Secretary of State for Foreign Affairs, to a Proposition which he had the honour to submit in writing on the 12th of December last, for an arrangement of the Trade between the United States and the British American Colonies, and in praying for a decision thereupon, is influenced, not merely by considerations of duty, urging him to avoid further delay, but by a hope, that the time already afforded for deliberation, has been sufficient to enable His Majesty's Ministers to judge of the reasonableness of his demands.

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It is far from the intention of the Undersigned to intimate, that The United States could be disposed to complain of any commercial Regulation of Great Britain, which by a system of reasonable preference, should consult the interests of her own Subjects; provided it were done in a spirit of amity and impartiality, and that it should place all Nations on an equal footing. But, when The United States shall think they have grounds to consider themselves singled out from all other Nations, and made the exclusive object of an injurious Regulation; when they shall imagine it levelled at their prosperity alone, either in retaliation of past deeds, or for interested purposes, to secure some adventitious advantage, or to encourage a hostile competition by means of commercial monopoly; however justifiable, in such case, they may admit the Regulation to be, in point of strict right, they will hardly be able to refrain, not merely from complaint, but from a course of measures, calculated, as they may think, to avert the intended injury; though pregnant, perhaps, with consequences to be ultimately lamented.

While the Undersigned would in no degree impair the full force of these considerations, he would, at the same time, be distinctly understood as not employing the language of menace. He has conducted his whole Negotiation with an unfeigned and anxious desire to see the relations of the two Countries placed on a footing equally advantageous and honourable to both, as the only means of insuring lasting amity; but, being profoundly sensible of the causes by which this desirable object may be defeated, he has framed his Proposition in such a manner as to enable His Majesty's Ministers to co-operate in his views, without departing from the principles of their system of Colonial Trade and Government.

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The Undersigned is not disposed to deny, that any departure from the rigid policy, by which the Colonies are excluded from all Commercial Intercourse, except with the Mother Country, must be founded on the interests of the Colonies themselves; and it will be doubtless conceded that such was the object of the Regulations proposed by the Act of Parliament of 1825, which were intended to furnish the British West India Islands with a more extensive market for their productions, and with the means of supplying themselves, on the cheapest terms, with all articles of foreign produce of which they might stand in need.

The Act of 1825 was, in fact, a relaxation of the previous policy, affording to the West India Colonies advantages of trade which they had not previously enjoyed, and offering the benefit of their Com-

merce to all the World. It will scarcely be denied, that this relaxation was dictated by a wise regard for the peculiar wants of those Islands.

The Undersigned takes this occasion, &c.

LOUIS M'LANE.

The Rt. Hon. THE EARL OF ABERDEEN, K. T.

Mr. McLane to the Earl of Aberdeen.

9 CHANDOS-STREET, PORTLAND PLACE,

12th July, 1830.

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary from The United States has had the honour already, in a personal Conference, to explain to the Earl of Aberdeen, His Majesty's Principal Secretary of State for Foreign Affairs, certain Measures adopted by the Congress of The United States, during their late Session, which have an immediate and important bearing on the relations of the two Countries, and upon the Proposition heretofore submitted by the Undersigned, respecting the West India Trade. Having received from the Earl of Aberdeen an intimation of the propriety of communicating those Measures in a more formal manner, the Undersigned has the honour, herewith, to transmit such information on the subject, as he is now in possession of.

The first of the Measures alluded to, is an Act of Congress of The United States, authorizing the President, in the recess of Congress, to annul all the restrictive and discriminating Measures of The United States, and to open the Ports to British Vessels trading with the British West Indies, in the manner particularly pointed out in the Act, a Copy of which, for the better explanation of the case, the Undersigned begs leave to subjoin.

* * * * *

It is a voluntary and leading step, in the conciliating policy of the two Nations, taken in disdain of the restraints of form; and which, if met in a corresponding spirit, cannot fail to produce that friendly intercourse and real harmony, so ardently desired by those who consult the true interests and glory of both Countries.

It concedes, in its terms, all the power in the regulation of the Colonial trade, and authorizes the President to confer on British Vessels all the privileges, as well in the circuitous, as the direct voyage, which Great Britain has at any time demanded or desired. It has done this in the only manner in which it was possible for Congress, at the present moment, and, under existing circumstances, to act, without a total abandonment of even those advantages conceded by the present Regulations of Great Britain, and without raising up new interests to oppose or obstruct the favourable disposition expressed by this Government.

Nor will the Undersigned conceal his hope and belief, that this act will stamp the Negotiation with a new and more favourable character; and that The United States, having thus taken the first step, and particularly defined the terms of their Legislation, the mode of adjustment may be disencumbered of even those objections with which

it was supposed to be embarrassed, when submitted to Lord Dudley, and by the Answer which, on that occasion, was given to Mr. Gallatin.

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In closing this communication to the Earl of Aberdeen, the Undersigned will take the occasion to repeat his deep interest on the subject, and a renewed hope of an early and favorable issue. The Earl of Aberdeen will not fail to appreciate the spirit and motive, by which the President was actuated, in recommending, and the Congress in passing, the Act, to which allusion was first made. The effects of delay upon the commercial enterprize of The United States, and the disappointment of interests, desirous of a different measure of Legislation, though they offered embarrassments were not the greatest difficulties attendant upon that Act.

* * * * *

If, as the Undersigned will continue to hope, the British Government should find it their interest to realize these expectations, their Measures will derive additional grace from the frankness and promptitude with which they may be adopted; and if, unfortunately these hopes are destined to experience a disappointment, it is not less the duty of His Majesty's Government to quiet the public expectations thus excited, and to mitigate, as far as may be in its power, the injurious effects thereof, by giving an early Reply to the Application which, in behalf of his Government, the Undersigned has had the honour to submit. The Undersigned avails himself, &c.

LOUIS M'LANE.

The Rt. Hon. the EARL OF ABERDEEN, K. T.

The Earl of Aberdeen to Mr. McLane.

FOREIGN OFFICE, 17th August, 1830.

The Undersigned, &c. has the honour to acknowledge the receipt of the Note of Mr. MacLane, &c., dated the 12th ultimo, communicating certain Measures which have been adopted by Congress, with a view to remove the obstacles which have hitherto impeded the re-establishment of the commercial intercourse between The United States and the British West India Colonies.

Previously to the receipt of this Communication, His Majesty's Government had already had under their consideration Mr. MacLane's Note of the 16th March last, explanatory of the Proposition contained in his Letter of the 12th December, 1829, with reference to the same subject; and the Undersigned assures Mr. MacLane, that His Majesty's Government, in the earnest and dispassionate attention which they bestowed upon this Proposition, were actuated by the most friendly feelings towards the Government of The United States, and by a sincere disposition to meet the Proposals which he was authorized to make, in the spirit with which they were offered.

But the Undersigned considers it unnecessary now to enter into any detailed discussion of the points embraced in those previous Communications of Mr. MacLane, because they are, in a great measure, superseded by the more specific, and, therefore, more satisfactory Propositions, contained in his Note of the 12th ultimo; to the con-

tents of which Note, therefore, the Undersigned will principally confine his present observations.

Of the character and effect of the recent Measure of the American Congress, Mr. MacLane observes that "it concedes in its terms all the power in the regulation of the Colonial trade, and authorizes the President to confer on British Subjects all those privileges, as well in the circuitous, as the direct voyage, which Great Britain has at any time demanded or desired."

In this declaration, the Undersigned is happy to observe the same spirit and disposition which dictated Mr. MacLane's former Communications, wherein he announced the readiness and desire of the American Government "to comply with the conditions of the Act of Parliament of 1825;" and also "that the claims advanced in justification of the omission of The United States, to embrace the offers of this Country, have been abandoned by those who urged them, and have received no sanction from the People of The United States:" and the Undersigned readily admits, that if the Bill, passed by the American Legislature, be well calculated, practically, to fulfil the expressed intentions of its Framers, it must have the effect of removing all those grounds of difference between the two Governments, with relation to the trade between The United States and the British Colonies, which have been the subject of so much discussion, and which have constituted the main cause of the suspension of the intercourse, by those restrictive Acts of The United States, which the American Government is *now* prepared to repeal.

The Proposition now made by Mr. MacLane, for the revocation of the Order in Council of 1826, stands upon a ground materially different from that on which the same question was brought forward, in the Notes of Mr. Gallatin, in 1827, and even in the more explanatory Overtures of Mr. MacLane, contained in his Communications of December, 1829, and March, 1830.

Those several Proposals were all of them invitations to the British Government to pledge itself, hypothetically, to the revocation of the Order in Council, in the event of a repeal of those Acts of the American Congress, which gave occasion to it. His Majesty's Government declined to give that prospective pledge or assurance, on the grounds stated in Lord Dudley's Note of the 1st of October, 1827. But the objections then urged are not applicable to the present Overture; provision has now been made by an Act of the American Legislature, for the re-establishment of the suspended intercourse, upon certain terms and conditions; and that Act being now before His Majesty's Government, it is for them to decide whether they are prepared to adopt a corresponding Measure on the part of Great Britain for that object.

The Undersigned is ready to admit that, in spirit and in substance the Bill, transmitted by Mr. MacLane, is conformable to the view which he takes of it, in the expressions before quoted from his Note of the 12th of July, and that it is, therefore, calculated to afford to Great Britain complete satisfaction on the several points which have been heretofore in dispute between the two Countries. He has also received, with much satisfaction, the explanation which Mr. MacLane has afforded him, verbally, in the last Conference which the Undersigned had the honour of holding with him, upon those passages in which the wording of the Bill appears obscure, and in which it

seems, at least, doubtful whether the practical construction of it would fully correspond with the intentions of the American Government, as expressed by Mr. MacLane: but it is nevertheless necessary, in order to remove all possibility of future misapprehension upon so important a subject, that he should recapitulate the points upon which those doubts have arisen, and distinctly state the sense in which the Undersigned considers Mr. MacLane as concurring with him in the interpretation of them.

The first point in which a question might arise, is in that passage of the Bill, wherein it is declared as one of the conditions on which the restrictions now imposed by The United States may be removed,—“that the Vessels of The United States, and their Cargoes, on entering the Ports of the British Possessions as aforesaid,” (viz.:—in the West Indies, on the Continent of America, the Bahama Islands, the Caicos, and the Bermuda, or Somer Islands) “shall not be subject to other or higher Duties of Tonnage or Impost, or Charges of any other description, than would be imposed on British Vessels, or their Cargoes, arriving in the said Colonial Possessions from the United States of America.” It is not quite clear whether the concluding words,—“from The United States of America,” are meant to apply to the Vessels of The United States and their Cargoes, in the first part of the paragraph, as well as to those of Great Britain, or her Colonies, in the latter part.

It can scarcely, indeed, have been intended, that this Stipulation should extend to American Vessels coming with Cargoes from any other Places than The United States, because it is well known, that, under the Navigation Laws of Great Britain, no Foreign Vessel could bring a Cargo to any British Colonial Port from any other Country than its own.

The next condition expressed in the Act is,—“that the Vessels of The United States may import into the said Colonial Possessions, from The United States, any article or articles which could be imported in a British Vessel into the said Possessions from the United States.”

In this passage it is not made sufficiently clear, that the articles to be imported, on equal terms, by British or American Vessels, from The United States, must be the produce of The United States. The Undersigned however, cannot but suppose that such a limitation must have been contemplated because the Clause of the Navigation Act, already adverted to, whereby an American Vessel would be precluded from bringing any article, not the produce of America, to a British Colonial Port, is not only a subject of universal notoriety, but the same provision is distinctly made in the Act of Parliament of 1825, which has been so often referred to in the discussions on this subject.

It was also necessary that the Undersigned should ask for some explanation of that Section of the Bill which has reference to the entry of Vessels into the Ports of The United States from the Continental Colonies of Great Britain in North America. These are not placed, in the terms of the Act, on the same footing as those Ships coming from the Colonies of the West Indies.

With respect to the latter, the express provision made for the direct intercourse with those Colonies, together with the simultaneous repeal of the several American Acts, which interdict at present the car-

riage of Goods from The United States to West Indian Ports, in Ships having arrived from other Ports, of the British Dominions, appear fully to warrant the expression before quoted of Mr. McLane, "that the Act would confer on British Vessels all those privileges, as well in the circuitous as in the direct voyage, which Great Britain has at any time demanded." But, with regard to the Continental Colonies, there is merely a provision for "admitting to entry in the Ports of The United States, British Vessels, or their Cargoes, from the Islands, Provinces, or Colonies of Great Britain, on or near the North American Continent, and north or east of The United States." It must, indeed, be presumed that Vessels from these Colonies are intended to be admitted upon the same terms in all respects, and to be entitled to the same privileges, as British Ships from any other British Colony.

The Act of Congress requires, as a further condition, that when the intercourse with the West India Colonies shall be opened by Great Britain, "the Commercial Intercourse of The United States with all other Parts of the British Dominions or Possessions, shall be left on a footing not less favourable to The United States than it now is."

Although it may be most truly stated that there exists at this time no intention to make any alteration in the Commercial Policy of Great Britain, and equally that there is no disposition on the part of His Majesty's Government to restrict in any measure the Commercial Relations between this Country and The United States; yet the positive condition, to maintain unchanged, or upon any particular footing of favour, every part of our system of trade, affecting our intercourse with America, could not with propriety be made the subject of any specific Engagement connected with the renewal of the Colonial Intercourse. Whether that Intercourse be renewed or not, it ought to remain at all times as free as it now is, both to the Government of Great Britain and to that of The United States, to adopt from time to time such Commercial Regulations as either State may deem to be expedient for its own interests, consistently with the obligations of existing Treaties.

It is due to the candour with which the Communications of Mr. McLane have been made on this subject, that the Undersigned should be thus explicit in noticing the passage in the Bill to which he has now adverted.

Mr. McLane, in his Note of the 12th ultimo, has described and explained in the material diminution which has been made, in the Duties payable in The United States on the importation of certain Articles of Colonial Produce. This measure has been viewed by His Majesty's Government with sincere satisfaction, as indicating a disposition to cultivate a Commercial Intercourse with His Majesty's Colonies, upon a footing of greater freedom and reciprocal advantage than has hitherto existed. But the Undersigned must frankly state, that, in the general consideration of the question now to be determined, no weight ought to be assigned to the reduction of those Duties, as forming any part of the grounds on which the re-establishment of the Intercourse may be acceded to. Those changes are part of the general scheme of taxation which the Government of America may at all times impose or modify, with the same freedom as that which Great Britain may exercise, in the regulation of any part of

its system of duties; and it is the more essential that His Majesty's Government should not contract, by implication, any Engagement towards that of The United States with respect to such alterations, because His Majesty's Government have already had under their consideration the expediency of introducing some modifications into the Schedule of Duties attached to the Act of Parliament of 1825, with a view more effectually to support the interests of the British North American Colonies. To those interests, fostered as they have incidentally been by the suspension of the Intercourse between the United States and the West Indies, His Majesty's Government will continue to look with an earnest desire to afford them such protection, by Discriminating Duties, as may appear to be consistent with the interests of other Parts of His Majesty's Dominions, and with a sound policy in the Commercial Relations of this Country with all other States.

The Undersigned has thought it desirable, that this point should be distinctly understood on both sides, in order that no doubt should exist of the right of Great Britain to vary those Duties from time to time, according to her own views of expediency unfettered by any obligation, expressed or implied, towards the United States, or any other Country.

The Undersigned adverts again, with satisfaction, to the verbal explanations which he has received from Mr. MacLane, of those passages in the Act of Congress, which have not appeared to the Undersigned to be literally adapted to the provisions of the Act of Parliament of 1825. He concurs with Mr. MacLane in thinking, that these will be found to have been merely apparent deviations from the conditions of that Statute; because, the whole of the recent proceedings of the American Government and Legislature, in this matter, have been manifestly and expressly founded upon a determination to conform to it. Any other view of the subject would be entirely at variance with the tenour of the several Communications from Mr. MacLane, before adverted to, which have all been conformable to the explicit Proposition contained in his Note of the 12th December, 1829, "that the Government of The United States should now comply with the conditions of the Act of Parliament, of July 5, 1825, by an express Law, opening their Ports for the admission of British Vessels, and by allowing their entry with the same kind of British Colonial produce, as may be imported in American Vessels, the Vessels of both Countries paying the same Charges; suspending the Alien Duties on British Vessels and Cargoes; and abolishing the restrictions in the Act of Congress, of 1823, to the direct Intercourse between The United States and the British Colonies: and that such a Law should be immediately followed, by a revocation of the British Order in Council, of the 27th July, 1826, the abolition or suspension of all Discriminating Duties on American Vessels in the British Colonial Ports, and the enjoyment, by The United States, of the advantages of the Act of Parliament, of the 5th July, 1825." It only remains, therefore, for the Undersigned to assure Mr. MacLane, that, if the President of The United States shall determine to give effect to the Act of Congress, in conformity with the construction put upon its Provisions, both by Mr. MacLane and by the Undersigned, all difficulty, on the part of Great

Britain, in the way of the renewal of the Intercourse between The United States and the West Indies, according to the foregoing Proposition made by Mr. MacLane, will thereby be removed.

The undersigned, &c.,

ABERDEEN.

LOUIS MACLANE, Esq.

Mr. Van Buren to Mr. McLane.

DEPARTMENT OF STATE,

Washington, 5th Oct., 1830.

SIR, Your Despatch of the 20th August was, on the 3d instant, received at this Department, and, with its, contents, laid before the President.

You will perceive by the enclosed Proclamation, and Instructions from the Treasury Department to the Collectors of Customs, that the President has adopted, without reserve, the construction given to the Act of Congress of the 29th of May, 1830, by Lord Aberdeen and yourself, by accepting the assurance of the British Government, with the accompanying explanations, as a compliance with its requisitions, and by doing all that was necessary to carry the proposed arrangement into complete effect on the part of the United States. By virtue of the President's Proclamation, and the operation of the Act of the Congress above referred to, our restrictive Acts are repealed, and the Ports of The United States opened to British Vessels coming from any of the British Colonial Possessions mentioned in both Sections of the Act, upon the terms stated in that Act, and in the accompanying instruction. The President does not doubt that, having thus given effect to the arrangement on the part of this Government, that of Great Britain will, without delay, do what is necessary on its side to remove all existing obstructions to the renewal of the intercourse between The United States and the British Colonial Possessions referred to, according to the proposition submitted by you and accepted by that Government. He allows himself also to expect that the circumstance that the ports of The United States are forthwith open to British Vessels, whilst the opening of those of Great Britain must await the action of the British Government, thus producing temporarily an unequal operation, will induce His Majesty's Government to give to the matter its earliest attention.

The President has derived great satisfaction from the candor and liberality which have characterised the conduct of His Majesty's Ministers throughout the negotiation, and particularly in not suffering the inadvertencies of our Legislation, attributable to the haste and confusion of the closing scenes of the Session, to defeat or delay the adjustment of a question, with respect to the substance of which, and the interest of the 2 countries, in its adjustment, both Governments are now happily of one opinion. He cherishes the most lively anticipations of the solid benefits which will flow from the trade that is about to revive, as well as of the benign influence which the satisfactory removal of a long standing and vexatious impediment to the extension of their commercial intercourse is calculated to exercise upon the relations between the 2 Countries. It is his wish that you

should make His Majesty's Government acquainted with these sentiments, and assure it that he will neglect no opportunity which may present itself, to prove his sincere desire to strengthen and improve those relations by every act within the sphere of his authority which may contribute to confirm the good understanding so happily established.

It is also to me a pleasing duty to express to you, as I am directed to do, the entire satisfaction of the President with your conduct on this important occasion. The untiring zeal, patriotic exertions, and great ability, which you have displayed in the difficult negotiation thus satisfactorily concluded, realise all the anticipations he had formed from the employment of your talents in this important branch of the public service, and entitle you to the thanks of your Country. To these sentiments I beg leave to add the expression of my own unqualified approbation of all your acts since the commencement of your Mission near the Government of Great Britain.

I am, &c.

M. VAN BUREN.

LOUIS McLANE, Esq.

Mr. McLane to the Earl of Aberdeen.

9 CHANDOS STREET, PORTLAND PLACE,
3d November, 1830.

The Undersigned, &c. has the honour to transmit, herewith, to the Earl of Aberdeen, &c. a Proclamation issued by the President of The United States, on the 5th of October last, and also a Letter of Instructions from the Secretary of the Treasury, in conformity thereto, to the several Collectors of The United States, removing the restrictions on the trade in British Vessels, with the Ports of The United States, and the Colonial Possessions of Great Britain: and the Undersigned takes leave to add, that, though these papers appear to be sufficiently clear and explicit, he will take much pleasure in making any further personal explanations of their import that may be considered desirable.

It will be perceived, however, that, by virtue of the foregoing Proclamation, and the operation of the Act of Congress, of the 29th May, 1830, the restrictive Acts of The United States are absolutely repealed; that the Ports of The United States are opened to the admission and entry of British Vessels, coming from any of the British Ports mentioned in both Sections of the said Act, with the same kind of British Colonial Produce as may be imported in American Vessels and upon the same terms; that the Alien Duties, in the Ports of The United States, on British Vessels and their Cargoes, and also the restrictions in the Act of the Congress of The United States of 1823, to the direct Intercourse between The United States and the British West India Colonies, are abolished.

The undersigned has the honour to state, further, that these Acts have been performed by the President, in conformity with the Letter of the Earl of Aberdeen, of the 17th of August last, and that, by accepting the assurance of the British Government with the accompanying explanation, as a compliance with the requisitions of the Act

of Congress of the 29th of May, 1830, and doing all that was necessary on the part of The United States to effect the proposed arrangement, he has adopted, without reserve, the construction put upon the Act of Congress, both by the Earl of Aberdeen, and the Undersigned.

In communicating these Documents to the Earl of Aberdeen, the Undersigned is instructed to inform him, that the President has derived great satisfaction from the candour manifested by His Ministers in the course of the Negotiation; and that, having thus given effect to the arrangement on the part of The United States, he does not doubt that Great Britain, acting in the spirit and terms of the Proposition, submitted by the Undersigned, and accepted in the Letter of Lord Aberdeen, of the 17th August last, will as promptly comply with those terms on her part, and remove the existing obstructions to the renewal of the intercourse between the Ports of The United States, and the British Colonial Possessions.

In conclusion, the Undersigned takes leave to state, that, from the date of the Proclamation of the President, the Vessels of Great Britain have been, and are actually, in the enjoyment of all the advantages of the proposed arrangement, while the Vessels of the United States are, and must remain, excluded from the same, until the requisite Measures shall be adopted by this Government. The Undersigned has the honour to ask, therefore, that the Earl of Aberdeen will enable him to communicate the adoption of those measures to his Government, by the opportunity which will offer for that purpose, on the 6th instant.

The Undersigned avails himself, &c.

LOUIS McLANE.

The Rt. Hon. the EARL OF ABERDEEN, K. T.

The Earl of Aberdeen to Mr. McLane.

FOREIGN OFFICE, 5th November, 1830.

The Undersigned, &c., has the honour to acknowledge the receipt of the Note of Mr. MacLane, &c. of the 3d instant, in which he encloses a Proclamation issued by the President of The United States, on the 5th ultimo, and also a Letter of Instructions from the Secretary of the Treasury, in conformity thereto, to the several Collectors of The Treasury, in conformity thereto, to the several Collectors of The United States, removing the restrictions on the trade in British Vessels with the Ports of The United States and the Colonial Possessions of Great Britain.

Mr. MacLane observes, that, by virtue of the Proclamation in question, and the operation of the Act of Congress, of the 29th of May, 1830, the restrictive Acts of The United States are absolutely repealed; that the Ports of The United States are opened to the admission and entry of British vessels, coming from any of the British Ports mentioned in both Sections of the said Act, with the same kind of British Colonial Produce as may be imported in American Vessels, and upon the same terms; that the Alien Duties, in the Ports of The United States, on British Vessels, and their Cargoes, and also the restrictions in the Act of Congress of The United States of 1823, to

the direct Intercourse between The United States and the British India Colonies, are abolished.

Mr. MacLane adds, that in performing these Acts, the President of The United States has adopted, without reserve, the construction put upon the Act of Congress of the 29th of May, 1830, by himself, and by the Undersigned in his Note of the 17th of August last.

The Undersigned having stated to Mr. MacLane, in his above-mentioned Note, that, under such circumstances, all difficulty on the part of Great Britain, in the way of the renewal of the Intercourse between The United States and the West Indies, according to the Proposition made by Mr. MacLane, would be removed,—he has now the honour to transmit to Mr. MacLane the accompanying Copy of an Order issued by His Majesty in Council this day, for regulating the Commercial Intercourse between The United States and His Majesty's Possessions Abroad.

The Undersigned cannot omit this opportunity of expressing to Mr. MacLane the satisfaction of His Majesty's Government, at the promptitude and frankness with which the President of The United States has concurred in the view taken by them of this question; and at the consequent extension of that Commercial Intercourse, which it is so much the interest of both Countries to maintain, and which His Majesty will always be found sincerely desirous to promote by all the means in his power.

The Undersigned, &c.

ABERDEEN.

LOUIS McLANE, Esq.

PERTAINING TO THE SITUATION IN 1852-1853.

Memorial of the citizens of Gloucester, Mass., respecting the Fisheries.—[July, 1852.]

To the Hon. DANIEL WEBSTER *Secretary of State of the United States*

The undersigned, citizens of Gloucester, Massachusetts, connected in interests with the Mackerel and *Cod* Fisheries, respectfully represent,

That your memorialists have seen, with great surprise, the late publications under the authority of the Department of State, relative to the course which the Government of Great Britain proposes to pursue towards the Citizens of the United States engaged in the Mackerel and Cod Fisheries.

That we and our fathers have always been accustomed to fish in the Great Bays of the North for Mackerel and Codfish; with the knowledge and acquiescence of the Governments of Great Britain and of the United States, that even so long since as the year 1829 the number of American vessels fishing in the Great Bays of Labrador was estimated at *Five Hundred* and that for years past over Five Hundred American vessels have passed the Gut of Canso into the Bay of Chaleur engaged in the fisheries.

Your memorialists represent that the course of the business of fishing is to follow the fish as they pass from one haunt to another, and that all the vessels engaged in the fisheries, at certain seasons, frequent the great Northern bays for the purpose of catching the fish—that to exclude them would have the effect of breaking up the whole voyage—would shorten the fishing season so much that it would be unprofitable to fit out vessels for fishing in anything like their present numbers and probably would exterminate a business always protected by our government as affording a superior nursery for American seamen.

Your memorialists represent that at this time there is probably *Twelve Hundred* sail of Fishermen manned by Twelve Thousand Americans, and costing including outfit about *Four Millions of Dollars* all belonging to this State, on or near the waters, the exclusive use of which is now claimed for the first time by Great Britain.

If the measures of seizure and exclusion threatened are carried out, all this immense amount of property will be jeopardized and, our Citizens reduced to beggary and made inmates of foreign prisons.

Your memorialists further estimate the entire interest put in peril by this act at about Two Thousand Five Hundred sail manned by *Thirty Thousand Seamen*, accustomed to draw a living from the business, and having generally families and homes in our coast towns, being almost entirely native born citizens—an amount of property at sea in this enterprise estimated at nearly *Twelve Millions of Dollars*.

Your Memorialists represent, that without prompt and efficient action from the Government, the Fishing interests will be thrown

into a state of panic, and alarm which may result in the loss of the whole year's business, and deprive those engaged in the business, and the numerous families dependent on them, of their means of living for the year, thus reducing the whole population of the Coasts of New England to distress, want and poverty, all of which evils may fall upon us by a feeling of insecurity and a sense of danger in pursuing our accustomed avocation. Your Memorialists further represent that there are vast numbers of Meckerelmen yet to sail on their usual voyage, and already prepared with their usual outfits, &c. for the purpose; that their destination cannot be changed without the loss of *millions of dollars*, and the consequent ruin and distress from such losses.

Your Memorialists further represent that the capital invested in their business is not that of wealthy merchants or citizens of great fortunes, but that these vessels are usually owned in shares by several persons, that most of the capital belongs to a great many people of very moderate means, and frequently represents the entire wealth of widows and children of farmers, shipmasters and seamen, living along the entire extent of the coast of New England.

Your Memorialists would therefore request, that an armed force of the Navy of the United States be at once despatched to those waters to give countenance and protection to our Fishermen in their legal rights, and to preserve our property from pillage and our fellow-citizens from foreign dungeons.

Your Memorialists are aware that negotiations are going on between the two Governments on this subject; but they feel that, unless an armed force of the United States is on hand to protect them, the presence of the British force, and the avowed hostility of their intentions will produce immense mischief and loss to our interests. Even a small force would give confidence to our seamen, and show that the powerful arm of our Government is ready and willing to protect them in the rights they have enjoyed ever since the glorious Revolution.

And your Memorialists will ever pray.

Names.

Residence.

E. W. Merchant and 68 others-----Gloucester

Memorial of the citizens of Gloucester respecting the Fisheries,
July, 1852.

Mr. Fillmore to Mr. Daniel Webster.

WASHINGTON CITY, *July 20th. 1852.*

MY DEAR SIR, Your note of the 17th. dated at Franklin came to hand this morning, inclosing a copy of your's of the same day to Mr. Crampton, and Mr. Hunter has shown me your telegraphic despatch of yesterday, requesting him to ask me whether it was not best to send one of our naval ships to Newfoundland to look after the disturbances among the fishermen. I have also perused your article in the Boston Courier of yesterday, and sincerely hope that these difficulties will not prove as serious as you seem to anticipate. I have seen Mr. Crampton who informs me that he will leave for Boston to-

morrow morning, for the purpose of having a consultation with you upon the subject of the fisheries. He informs me also, that he has addressed a circular to the several Governors of the British Provinces of North America advising moderation and forbearance upon this subject. I doubt not that when you and he meet you will be able to agree upon some line of proceeding that will allay the present excitement and prevent any bloodshed. I would suggest that you unite in a publication in which you should express your regrets that any misunderstanding had arisen between our fishermen engaged in the fisheries at Newfoundland, and the colonial subjects of Great Britain; that the differences of opinion which have arisen between the two Governments, in reference to their respective rights under the Convention of 1818, have called the attention of both Governments to the subject, and that together with the subject of reciprocal trade between Her Majesty's Provinces of North America and the United States, will doubtless become the immediate subject of negotiation between the two countries; that in the meantime and until these matters can be amicably adjusted, you both concur in the opinion that under the Treaty of 1818 our citizens had the unquestioned right of fishing on the southern and western shore of the Island of Newfoundland, lying between the Islands of Ramea on the south and the Island of Quiperon on the north, and of entering upon any unoccupied lands upon the shore of said island between Cape Ray and said Island of Ramea, for the purpose of drying and curing fish; and also of fishing upon the shores of the Magdalen Islands; and with regard to all the rest of the Island of Newfoundland, and the other islands and mainland of Nova Scotia and New Brunswick, the English Government, so far as they have not conceded it to the French have the exclusive right of fishing in all the waters adjacent to such islands or mainland and within three marine miles of the shore; but as for those waters in the several bays and harbours which are more than three marine miles from the shore of such bay or harbour upon either side, and within three marine miles of a straight line drawn from one headland to the other of such bay or harbour, that you as the Representative of the United States conceived that our fishermen have the right under the Treaty to fish therein, but the British Government having held that by a true construction of the Treaty such right belonged exclusively to British subjects; and as those waters were thus in dispute between the two nations, you respectively advised the citizens and subjects of both countries not to attempt to exercise any right that either claimed within the disputed waters until this disputed right could be adjusted by amicable negotiation.

I perceive by the papers that your publication in the Boston Courier is somewhat misunderstood, and has consequently created unnecessary alarm; and some such joint publication as I have suggested above will, I think, quiet the apprehensions of the country, and be generally acquiesced in and obeyed by the parties engaged in the fisheries. I do not, of course, intend to indicate the precise words of such a declaration, as I write in much haste, and you are much more competent to prepare the article than I am. As to the subjects of negotiation, beyond those growing out of the construction of the Treaty of 1818, I will write you more fully hereafter. I do not know whether our citizens engaged in the fisheries seek for anything more

than what they would obtain under the Treaty of 1818 if it received the construction for which we contend. If they do, then that will be one additional subject of negotiation; the right of navigating the St. Lawrence and the Welland Canal will of course be another; but the reciprocal trade between us and the British Provinces is one which I greatly prefer should be settled by legislation. If however that cannot be done, it may be best to settle it by a treaty for a limited time. But, as I said before, I will write you more fully upon this subject when I have had more time for reflection.

I have seen the Secretary of the Navy, who says the Mississippi steam frigate, Captain McCluney is now at New York and could be sent to the Banks of Newfoundland, if desired. She is however, as you are aware intended as the flag-ship of Captain Perry and of course will soon be wanted for that expedition. I thought however I would wait until you and Mr. Crampton had settled upon something definite, from which proper instructions might be drawn before I ordered the vessel to proceed to that destination. Regretting that this unfortunate business compels you to leave the mountains and valleys of your native State, but hoping that it will detain you but a short time

I remain, truly & sincerely yours
(Signed)

MILLARD FILLMORE

The Honourable DANIEL WEBSTER,
Secretary of State, Boston, Mass'tts.

Extracts from the Life of Daniel Webster, by G. T. Curtis, published, 1870.

On the 12th of July [1852] Mr. Webster went to Franklin, where he remained until the 20th. While there he received information of a step that had been suddenly taken, by the English Government, in regard to the fisheries off the coasts of the British provinces; a step that at once produced much excitement and alarm in this country. Some explanation of the origin of this difficulty is here necessary.

Before the Revolution, all the British colonies in America had the right, in common, of fishing in and about the Gulf of St. Lawrence. The United States secured a continuance of their share in these privileges by the treaty of 1783; but the British claimed that the War of 1812 put an end to them forever. This was denied on the part of the United States; and the dispute, which followed, was settled by the Convention of 1818, which granted to American citizens the right to fish along certain portions of the shores of Newfoundland, Labrador, and elsewhere, to within three miles of the coasts, bays, estuaries, etc., of the British provinces. Misunderstandings and collisions soon followed, the Americans claiming that they had a right to enter the wide gulfs and bays, so long as they did not approach within three miles of the shore, and acting accordingly; while the provinces declared that they could not come within three miles of a line drawn from headland to headland; and they attempted to seize such vessels as violated their interpretation of the treaty. Complaints and troubles were continually arising, giving occasion for frequent dip-

lomatic discussions between the Governments for a period of thirty years. Finally, in 1852, the British colonies united in fitting out cruisers to protect what they regarded as their exclusive rights in a portion of these waters, and to prevent encroachments by citizens of the United States. The home Government had now adopted the provincial interpretation of the treaty, and dispatched a naval squadron to assist the cruisers of the Colonies. The first *official* intimation of this course, on the part of the British Government, was received by Mr. Webster in a letter from Mr. Crampton, announcing the steps taken "to prevent a repetition of the complaints which have so frequently been made of the encroachments of vessels belonging to the United States and France upon the fishing-grounds reserved to Great Britain by the Convention of 1818." His Government had been led, he continued, by urgent representations from the governors of the provinces, to give directions "for stationing, off New Brunswick, Nova Scotia, Prince Edward's Island, and the Gulf of St. Lawrence, such a force of small sailing vessels and steamers as shall be deemed sufficient to prevent the infraction of the treaty."

The truth is, that, in 1845, during some negotiations on this subject, while the two Governments maintained their opposite constructions of the Convention of 1818, on the point of right, the British ministry of that day instructed their colonial authorities that they had determined to relax the strict rule of exclusion over the fishing vessels of the United States entering the bays of the sea on the British North American coasts.^a Under this relaxation of the British claim, the American fishermen had continued to the present time to enter all the great bays which were more than six miles wide at their mouths, but keeping at a distance of more than three miles from the shore of the bay. In this attitude of things, it is now claimed that the American fishermen could not approach within three miles of a line drawn across the entrance of such bays from headland to headland; and a squadron of nineteen vessels was sent from England to enforce this exclusion, at the moment when our fishermen were about to sail on their accustomed cruise.

Mr. Crampton was directed to give notice of this exclusion to the American Government. But, before Mr. Webster received the notice, intelligence of what was contemplated reached him from the British provinces. He at once proceeded to take the necessary steps to meet a hazardous conjuncture. On the 17th of July he wrote to the President, and, on the same day, he sent for Mr. Crampton to meet him in Boston or at Marshfield.

* * * * *

Mr. Webster's purpose, in sending for Mr. Crampton, was to enter at once upon a negotiation which should embrace a settlement of the fisheries and of the trade between the British provinces and the United States, as parts of one subject. Mr. Crampton arrived in Boston on the 24th of July, and was to follow Mr. Webster to Marshfield. On the 25th Mr. Webster left Boston, and, when he alighted from the train at Kingston, nine miles from his own house, he found a great gathering of his neighbors and the people of the surrounding country prepared to escort him home. For miles on either side of the route,

^a Dispatch from Lord Stanley, Secretary for the Colonies, to the Governor of Nova Scotia, May 19, 1845.

the road-sides were lined with women and children, the male part of the population having mostly joined the procession, consisting of more than a hundred and fifty vehicles, many persons on horseback, and some on foot.

* * * * *

It was now Mr. Webster's intention to proceed to Washington, so soon as he should have recovered health and strength enough to encounter the journey. The President was anxious to have the negotiation with Mr. Crampton conducted there; and he was not willing to have Mr. Webster leave the Department of State, unless he would consent to accept the English mission, then likely to be vacant by the return of Mr. Lawrence, in which case he could settle all the pending business in England relating to the fisheries and the other topics. This plan was, for a short time, under consideration; but, on the 25th of July, Mr. Webster informed the President that he could not think of it.

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On the following day, Mr. Webster offered to place his resignation in the hands of the President, if his convenience and the public interest would be promoted by so doing.

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The President earnestly desired Mr. Webster to remain in office, and to come to Washington only whenever his health would permit.

On the 4th of August I made a short visit to Marshfield, and found Mr. Webster about to proceed to Washington on the next day, for the purpose of resigning his office, if an arrangement could be made to fill it. On the previous evening he had received a letter from the President, saying that he was surrounded by embarrassments, and asking Mr. Webster's advice and aid. It was therefore Mr. Webster's intention to go to Washington, and, if possible, after affording to the President all the assistance he could, in the course of ten days, to obtain his own release, if the President could fix on a suitable successor. When I asked him if he could leave the fishery question as he wished to leave it, he said that he should be glad to settle it, and could do so before Mr. Fillmore's Administration would end in the following March, but that he should not remain in office on that account, if the President would consent to have the negotiation undertaken by some one else. Mr. Crampton, who was then with Mr. Webster as a guest, talked with me very frankly about this affair, and said that it could be, and no doubt would be, adjusted to the satisfaction of both nations, if Mr. Webster remained in office to do it.^a

^a Mr. Webster had, in fact, already settled the fishery question in one and the most important sense; for, by promptly issuing the document which he published on the 19th of July, and by sending for Mr. Crampton, and receiving him at Marshfield for consultation on the whole subject, he made it manifest to both nations that he did not intend to allow a hasty and ill-advised step of the British Ministry to imperil their peaceful relations. The dangers of a collision were thus at once arrested. It was, however, afterward charged in the English press, and, subsequent to Mr. Webster's death, it was more distinctly charged by Lord Malmesbury, in the House of Lords, that Mr. Webster was responsible for the alarm felt in this country; and that he was, perhaps, actuated, in publishing the paper of July 19th, by electioneering motives. All this was attributable to the inexact attention which is often given in England to American affairs. Mr. Webster was at this time not only no candidate for

Mr. Webster went to Washington during the first week in August, and remained there until the 8th of September. Nothing could be done about supplying his place in the Department of State, and he therefore consented to remain in office, and to continue at Marshfield his attention to the diplomatic business that required his care. But, before he left Washington again, he was obliged to dispose of an embarrassing subject. This was the affair of the Lobos Islands.

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(To Mr. Blatchford.)

“AUGUST 24, 1852, TUESDAY MORNING,
Seven o'clock.

“MY DEAR SIR: You see Lobos. Shall I leave off there, and make that my final, or shall I write an elaborate article on the fisheries, and put finis at the end of that? As to this fishery question, I have my great halibut-hook in it; and, if Hatch holds on, it must come aboard.

“No catarrh yet, and the weather a little better.

“Yours,

“D. W.”

* * * * *

On the 20th of September, Mr. Webster made an unexpected visit to Boston, for the purpose of consulting his physician, Dr. Jeffries. He came in his own carriage, driven by Mr. Baker, and accompanied by Mrs. Baker; for he had now become so feeble, that Mrs. Webster was unwilling to have him go without being attended by those who were accustomed to his wants, and on whose affectionate vigilance she could rely. Of this visit there is an account in Mr. Ticknor's *Reminiscences*, which shows how great had been the changes in his physical condition during the past ten days.

“Mr. Webster was ill at Marshfield with his last illness—some of us were alarmed—all were anxious. Very unexpectedly his card was brought to me at my house, on the 20th of September, dated by his own hand, ‘Monday, two o'clock, No. 2 West Cedar Street,’ accompanied with a verbal request that I would go there to see him. I went immediately; he was in bed, looking very ill, but speaking brightly and cheerfully. He told me that he wanted Mrs. Ticknor and myself to come down and make him a visit at Marshfield—he had often asked us before, but we had never been, because we had

the presidency, but he had in no way permitted it to be understood that he was in favor of the election of General Scott, or meant to promote the success of either of the two parties. The information received from the British provinces, before Mr. Crampton's notice had actually reached Mr. Webster, was of a very alarming character; and that notice was not calculated to relieve the apprehension. What Mr. Webster had to do was to prevent our fishermen from sailing without due intelligence of the altered state of things in the waters where they had been accustomed to pursue their vocation; and he could only do this by a public warning. What he had next to do was to bring Mr. Crampton at once into personal communication with himself. There never was a moment in Mr. Webster's life, when he stood more absolutely independent of all political considerations and influences than he did in the summer of 1852. He felt perfectly indifferent about the success, in the election, of the party with which he had acted. But, while he remained Secretary of State, he intended to keep England and America out of unnecessary national difficulties.

hardly ever been in Boston at the season of the year when he was in Marshfield, and when it was agreeable to go there.

"I told him that Sir Charles and Lady Lyell were staying with us, and that Mrs. Ticknor would not probably be able to go—he then said I must bring Anna with me—and it was settled that I should give him, the next morning, a definitive answer to his kind invitation. I would then have left him, but he said he would like to have a little talk; he said he hadn't done much during the summer, but that he had had a good deal of discussion with Mr. Crampton upon the fishery matters, and had drawn up a protocol about them, and begun another paper which he would show me.

"He said he did not feel sure that he could do such things now as well as he used to. I laughed, and told him that he had suggested the same idea to me the year before, and that he had had abundant reason since to know that it was unfounded. 'True,' he said, 'true, but I don't feel now as I did a year ago.'

* * * * *

Mr. Ticknor writes:

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"After dinner, he gave me the protocol and papers on the fishery question, and explained to me how he had intended to complete the unfinished argument. It struck me that it was logical and strong, but I forget its precise form. He said, as he gave them to me, that he wished I would read them carefully; and added: 'President Fillmore thinks the protocol is as able as any thing I have done of late.' I understood the intimation; it was a misgiving as to the full strength of his powers. The protocol was not of sufficient consequence, it struck me, to settle that doubt; but the beginning of the general argument, with the explanation of the manner in which he meant to carry it on, left no hesitation in my mind, and, when I returned the papers, I told him so. What I said (I do not remember the words I used) was evidently not unwelcome to him.

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Mr. Webster to President Fillmore.[^a]

Private & Confidential.]

MARSHFIELD, Aug. 4, 1852.

MY DEAR SIR: Enclosed you will find the draught of two Treaties, prepared by Mr. Crampton and myself—one respecting Oregon, and one respecting Copy-right. I forward them in advance of my own arrival; to the end that you may have the longest time for their consideration. I think it very probable that you will be of opinion that, in the embarrassed state of the business before Congress, it will be hardly worth while to submit either of them to the Senate this Session. Indeed, in regard to the Oregon Treaty, the draught differs so far from Mr. Crampton's instructions, that he thinks it will be necessary for him, before he signs it, to consult his Government.

I have been informed of the flare-up in the Senate, yesterday respecting the Fisheries. I have very considerable alarm on this sub-

[^a Extract from "The Letters of Daniel Webster," by Van Tyne, pub. 1902.]

ject. Your enemies, and mine, among the Whigs, and the Young Americans among the Democrats, are very like to join in opposing the Administration and in embarrassing the State of our affairs with England. I have reflected much on the subject of these English orders; as well from the Home Government, as the Canadian Government, respecting interference with our vessels. In my opinion there is solid grounds for remonstrating against both independently of anything which has yet been suggested. Certainly, such seizures are not within the ordinary jurisdiction of a Court of Admiralty. I think the High Court of Admiralty in England could not take cognizance of such a seizure, or condemn the vessel seized, without a special act of the Imperial Parliament; and, as to the Acts of the Provinces, I am prepared to say at once, that we ought not to admit any seizures to be made by Provincial vessels. It appears to me, that this is a case of an alleged violation of Treaty, by alleged encroachment upon Territory in time of peace. It is something like the converse of McLeod's case. Its appropriate remedy is diplomatic complaint, from one Government to the other; and not of redress by the exercise of local jurisdiction.^a

Have the goodness to think upon this.

Yours always truly

D. W.

Fisheries and Commercial Reciprocity with Canada.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING
A REPORT ON THE SUBJECT OF THE FISHERIES AND COMMERCIAL RECI-
PROCITY WITH CANADA.

[February 8, 1853.—Referred to the Committee on Foreign Affairs.]

To the Senate and House of Representatives:

Having, in my message to Congress at the opening of the session, adverted to the pending negotiations between this government and that of Great Britain relative to the fisheries and commercial reciprocity with the British American provinces, I transmit, for the information of Congress, the accompanying report from the Department of State on the present state of the negotiations; and I respectfully invite the attention of the two houses to the suggestion in the latter part of the report.

MILLARD FILLMORE.

WASHINGTON, *February 7, 1853.*

[Inclosure.]

DEPARTMENT OF STATE,
Washington, February, 1853.

SIR: The Secretary of State has the honor to submit to the President the following report, relative to the negotiation pending between this government and that of Great Britain, on the subject of the fisheries, of reciprocal intercourse with the British North American

^a Before Webster's death, in October, 1852, he partly prepared a long diplomatic letter upon this subject of the fisheries.

provinces, and the navigation of the St. Lawrence and the canals connected with it.

The prospects of the negotiation, at the commencement of the session, were alluded to in a general way in the President's message. The attention of this department was given to the subject at the earliest day possible, and it has been pursued with diligence. It has been perceived, with satisfaction, that the government of Her Britannic Majesty is prepared to enter into an arrangement for the admission of the fishing vessels of the United States to a full participation in the public fisheries on the coasts and shores of the provinces, (with the exception, perhaps, at present, of Newfoundland,) and in the right of drying and curing fish on shore, on condition of the admission, duty free, into the markets of the United States of the products of the colonial fisheries; similar privileges, on the like condition, to be reciprocally enjoyed by British subjects on the coasts and shores of the United States.

Such an arrangement the Secretary has reason to believe would be acceptable to the fishing interests of the United States.

It is also understood that the British government is desirous, in concert with the provinces, to come to an agreement with the United States for reciprocal free trade with the provinces in certain natural productions, and that the free navigation of the river St. Lawrence and of the Welland and Rideau canals would be conceded as part of the arrangement.

An agreement of this kind has for several years received the attention of Congress, and a bill providing for reciprocal free trade in certain articles on one occasion passed the House of Representatives. The present negotiations have been conducted by the department under the impression that, if the details of the arrangement could be satisfactorily settled, and in such a way as to afford a prospect of mutual benefit, Congress would be disposed to perform its part to carry it into effect.

Even if the United States, as the party to the compact which furnishes by far the largest market to the other, should think it necessary in some respects to limit, and in others to enlarge, the number of articles subject to the arrangement, beyond what the British government or the provinces would prefer, the Secretary has been of opinion that the main provisions above alluded to promised so much benefit on both sides, that it would be felt to be expedient to enter into the arrangement for a definite time, leaving to future legislation and negotiation, guided by experience, to render it still more satisfactory by further limitation or enlargement.

The number and variety of the details which have presented themselves in the progress of the negotiation, and the important interests in different parts both of the United States and the British provinces requiring to be carefully considered, taken in connexion with the necessity of a reference to London for instructions as to all questions of moment that arise unexpectedly, have thus far prevented, and will probably render impossible, the conclusion of a comprehensive arrangement of the kind contemplated in season to be submitted to the Senate, and to become the subject of legislative action during the present short session. It is believed, however, from the progress made, and the present state of the negotiations, that time only is

wanted for a satisfactory agreement between the two governments on all the subjects above alluded to.

The only part of the proposed arrangement which may be considered as of an urgent nature, is such an adjustment of the fisheries question as would remove all danger of trouble on the fishing grounds during the approaching season. This is an object of great importance, and worthy the immediate attention of Congress. As belonging to a general settlement, the British government is not willing to dispose of it separately; but the Secretary of State is of opinion that, under the circumstances of the case, if Congress should pass an act admitting provincial fish free of duty into the United States, on condition that the fishermen of the United States are admitted to a full participation in the provincial fisheries, the government of Great Britain would give effect to the measure by the requisite legislation on her part; in the expectation on both sides that the question of reciprocity and of the use of the St. Lawrence, and the canals connected with it, will be taken up hereafter, with a favorable disposition to come to a mutually advantageous agreement on that part of the subject also.

Even if such an act should fail to produce the desired result, which is not apprehended, it would relieve the United States of the responsibility of the consequences.

All which is respectfully submitted:

EDWARD EVERETT.

To the PRESIDENT OF THE UNITED STATES.

Mr. Dobbin to Commodore Shubrick.

UNITED STATES NAVY DEPARTMENT,
July 14, 1853.

SIR: Reposing confidence in your judgment, prudence, and patriotism, the Navy Department sends you on a mission involving the discharge of delicate and responsible duties, bearing at once on the protection of rights and the preservation of peace. Information has reached the government of the United States that her Britannic Majesty's government has stationed off New Brunswick, Nova Scotia, in the Gulf of St. Lawrence, and at other points along the coast of British American possessions, a considerable force of war steamers and sailing-vessels, under the command of Sir George Seymour, fully armed and manned; that this array of naval strength is alleged to be designed for service in protecting the rights of British subjects, and preventing the apprehended encroachments of American citizens upon the "fishing grounds," reserved to Great Britain by the convention of 1818, as interpreted by her Majesty's government; that a large class of enterprising and worthy citizens in the New England States have become apprehensive that there is a settled purpose to disturb them in the enjoyment of their fishing privileges; and in the absence of any naval force of the United States in that region, armed fishing vessels have gone out with crews prepared to take the defence of their rights in their own hands.

In view of these circumstances, with a desire to quiet the public mind and furnish every assurance that the rights reserved to our citizens under the treaty of 1818 shall be promptly and sacredly protected, and the further desire to prevent collision and promote fidelity to treaty stipulations, the Executive of the United States has concluded to send a naval force to cruise in the seas and bays frequented by our fishermen.

It is proper, however, in entering upon the task committed to your charge, that you should be put in possession of the past history of the controversies and treaties between the United States and Great Britain in regard to the fishery questions, as well as the views entertained by the present Administration. The following is the article in the treaty of 1783:

"ART. 3. It is agreed that the people of the United States shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland, also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish; and, also, that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same in that island;) and, also, on the coasts, bays, and creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose, with the inhabitants, proprietors or possessors of the ground."

After the war of 1812 a controversy arose as to whether the stipulations of that treaty were abrogated by that war. This controversy, however, resulted in the convention of 1818, of which the following is the article bearing on the points involved:

"ARTICLE 1. Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon islands, on the shores of the Magdalen islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such

portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America, not included within the above-mentioned limits: *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

This article was designed to settle all doubtful questions touching the rights of the parties; but, unfortunately, a very wide and embarrassing difference of opinion has long existed, and does still exist, between the two governments, as to the proper construction of that article of the convention of 1818. The point of difference is, as to the true interpretation of that portion of the above-recited article in which the United States renounce the right to take, dry, or cure fish within "three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America." On the American side it has been contended that American fishermen have a right to enter and fish in any of the bays which indent these shores, provided they never approach, for the purpose of taking fish, within three marine miles of the coasts by which such bays are encompassed. On the part of Great Britain, it has been contended that these three marine miles are to be measured from headland to headland, and not from the bays or indents of the coast.

This restrictive construction on the part of Great Britain, you will perceive from a glance at the map, if strictly enforced, would exclude our fishing vessels from George's bay, the Bay of Miramichi, the straits of Northumberland, and the large Bay of Chaleur, where the best mackerel are annually caught. Now, these are large open bays, much more than six marine miles wide, and our fishing vessels can, with ease, enter and fish without ever approaching within three marine miles of the coast. The treaty does forbid their taking fish within three marine miles of the shore; and that restriction, unfavorable and inconvenient as it is to our fishermen, must be faithfully submitted to as long as this treaty exists. But the President entertains the opinion that our citizens, under the convention of 1818, have a right to enter the bays and harbors, and to take fish there, provided they do not approach within three marine miles of the shore; and he further entertains the opinion, that the clause which authorizes expressly the entering into bays and harbors "for the purpose of shelter, &c.," precludes the idea that it therein alluded to large open bays, such as the Bay of Chaleur, which afford but little better "shelter" than the open sea, and confirms him in his opinion that the restriction was designed to be applicable to narrow small bays and harbors, in which an entrance could not be effected without approaching "within three marine miles of the shore," but within which it was natural and proper that our fishermen should have the liberty to enter "for the purpose of shelter, &c."

As to the Bay of Fundy, the government of her Britannic Majesty have relaxed their previous interpretation of the treaty. The following extract from the letter of Lord Aberdeen, in 1845, to the American minister, Mr. Everett, will explain the views of her Majesty's government so far as relates to this bay:

"The undersigned will confine himself to stating that, after the most deliberate reconsideration of the subject, and with every desire to do full justice to the United States, and to view the claims put forward in behalf of United States citizens in the most favorable light, her Majesty's government are nevertheless still constrained to deny the right of the United States citizens, under the treaty of 1818, to fish in that part of the Bay of Fundy which, from its geographical position, may properly be considered as included within the British possessions.

"Her Majesty's government must still maintain—and in this view they are fortified by high legal authority—that the Bay of Fundy is rightfully claimed by Great Britain as a bay within the meaning of the treaty of 1818; and they equally maintain the position which was laid down in the note of the undersigned, dated the 15th of April last, that with regard to the other bays on the British American coast, no United States fisherman has, under that convention, the right to fish within three miles of the *entrance* of such bays as are designated by a line drawn from headland to headland at that entrance.

"But, while her Majesty's government still feel themselves bound to maintain these positions as a matter of right, they are nevertheless not insensible to the advantages which would accrue to both countries from a relaxation of the exercise of that right to the United States as conferring a material benefit on their fishing trade, and to Great Britain and the United States conjointly and equally by the removal of a fertile source of disagreement between them.

"Her Majesty's government are also anxious, at the same time that they uphold the just claims of the British crown, to evince, by every reasonable concession, their desire to act liberally and amicably towards the United States.

"The undersigned has accordingly much pleasure in announcing to Mr. Everett the determination to which her Majesty's government have come, to relax in favor of the United States fishermen that right which Great Britain has hitherto exercised, of excluding those fishermen from the British portion of the Bay of Fundy; and they are prepared to direct their colonial authorities to allow henceforward the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the treaty of 1818, within three miles of the *entrance* of any bay on the coast of Nova Scotia or New Brunswick."

You will perceive, therefore, the only point at issue between the two governments, and understand the views of the Executive on the same, as above briefly but plainly set forth.

The President does not allow himself to believe for a moment that her Majesty's government designs, by her large force in that quarter, to do more than protect her subjects in the enjoyment of those rights conceded by our government, and especially enjoins it upon you to warn our citizens, with scrupulous fidelity to abstain from taking

fish within three marine miles of the coasts of the British possessions provided for in the article of the convention of 1818.

The point in dispute as to the right to enter the open bays, provided they do not approach within three marine miles of the shore, is understood in Great Britain as well as within the United States, and the President does not apprehend that force will be rashly resorted to against our citizens fishing in the bays and harbors, provided they avoid approaching within three marine miles of the shore, more particularly as it is known to her Majesty's government that it is at this moment a subject of negotiation.

On reaching Halifax, however, you will have an interview with Admiral Seymour, who, we learn, has command of her Majesty's squadron in that region. You will frankly inform him of the President's interpretation of the treaty—of the desire of your government to preserve peace and avoid the calamity of a war and the disruption of the friendly relations now so happily subsisting between the two governments—of your instructions, and determination to warn our citizens of the importance of observing the rights of Great Britain with strict fidelity, and avoiding any infraction of existing treaties.

In your interview you will endeavor to ascertain the views of Admiral Seymour, the instructions of his government, and especially the course he designs pursuing towards any of our fishing vessels that may be found fishing in the bays, but not within three miles of the shore. You will communicate to the department promptly the result of your interview, and whatever views may suggest themselves to you in regard to the whole subject, and await further despatches from the department at Halifax, or any other point, if preferable and more convenient.

Portland and Eastport are points at which the department would suggest to you to touch, and learn from the collectors such facts as their observations and experience may enable them to furnish. Their suggestions and information may serve to some extent to guide you in your cruise.

The department desires you, if practicable, to visit the whole of the fishing ground, from the northern boundary of the United States as far north as in your sound discretion you may deem it important.

It is sincerely hoped that your presence will have the effect of quieting the excitement said to exist among our fishermen, and that your warning will admonish them never to venture where treaty stipulation does not clearly authorize them. You will see, also, that foreign vessels are not engaged in fishing on our coasts without authority.

If on any occasion you discover attempts making to deprive any of our citizens of their just rights, you will respectfully but firmly remonstrate; and if persisted in, you will take such steps as in your judgment will be best calculated to check and prevent such interference; never resorting to violence as a matter of self-defence and necessity.

All courtesy and respect will be shown to the armed vessels of England and France.

You will communicate as often as possible with the department.

The steamers Princeton and Fulton, and the sloop-of-war Decatur, will be under your command. The Cyane and other vessels may be added if deemed important.

Your mission, Commodore, is one of peace; but while you do nothing to provoke war, you will do nothing to jeopard our rights or compromise our honor.

You will continue actively engaged in the duties confided to you until the middle of September next, unless the situation of public interests should, in your judgment, render an earlier return necessary, in which event you will immediately thereafter repair to the city of Washington and report to the department.

Wishing you a safe and prosperous cruise, I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Com. W. B. SHUBRICK,

*Appointed to command U. S. squadron for the
Eastern coast of the United States, Washington.*

Mr. Dobbin to Commodore Shubrick.

NAVY DEPARTMENT,
Washington, July 23, 1853.

SIR: The department acknowledges receipt of your communications numbered 2 and 3, dated Portsmouth, N. H., July 20, 1853.

You state that Mr. Crampton, the British minister, informs you that "the colonial government had placed under the orders of Admiral Seymour all the colonial cruisers, which vessels had been commissioned by him, and have thus become vessels of war in the Queen's service."

You mention "the circumstance as showing the determination of the Admiral to carry out the British interpretation of the treaty to the fullest extent, and in the belief that the department may deem it proper, in view of this circumstance, to add somewhat to the instructions already given to you touching the extent to which the views of our government on the same point are to be pressed."

Until you have had the interview with Admiral Seymour, as suggested in your first communication from this department, I have nothing to add to the instructions therein given. Since your departure from Washington, intelligence has reached the department, informally it is true, well calculated to make the impression that Admiral Seymour will not resort to violence, even if our fishing vessels do venture to fish in the bays, unless it is indulged in with a display of arms, and in a manner and spirit of defiance calculated to irritate and offend, which I do not allow myself to suppose will occur.

Before separating from the officers in command of the several vessels of the squadron under your command, you will, of course, inform them thoroughly of the views of the government; of the desire to avoid collision, by warning our fishermen of the importance of a due observance of the treaty, and assuring them that their government will afford them the protection to which they are entitled.

The Cyane has been ordered to join you, but the department has not yet received any reply to the order.

I am gratified to learn that there is a strong probability that under the skill of engineer Martin and his associates, the Princeton may yet be a successful and serviceable war steamer.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Com. W. B. SHUBRICK,

*Commanding the United States Squadron,
Eastern coast of the U. S., Portsmouth, N. H.*

Commodore Shubrick to Commander Whittle.

U. S. STEAMER PRINCETON,
Portsmouth, N. H., July 23, 1853.

SIR: The Decatur being in all respects ready for sea, you will proceed, when the signal is made for you to separate, to the grounds usually resorted to by American fishermen. You will run along the coast of the United States as far as Penobscot bay, and then stand across the mouth of the Bay of Fundy to Cape Sable, then along the coast of Nova Scotia to the Strait or Gut of Canso; passing through which, you will proceed to the Magdalen islands; from the Magdalen islands you will stand over to the island of Newfoundland, making the island about Cape Ray, and running down on the west coast the whole extent of the island, and then cross to the coast of Labrador.

You will anchor at your discretion at the places most resorted to by our fishermen, and so regulate the extent of your cruise as to return to St. John, Newfoundland, by the twentieth of August, where you will probably find me, or orders for your further proceedings. If I should not be there, and you should receive no orders, you will leave St. John in time to be at Portsmouth, N. H., by the 15th September.

The objects of your cruise are, in the first place, to protect the citizens of the United States engaged in the business of fishing in their just rights; and, in the second place, to caution them against encroaching on the rights of others. What those respective rights are you will learn by the copy of the first article of the convention of 1818, which is enclosed with this, and in which they are defined.

You will be careful to maintain, in your intercourse with vessels of war of other nations with which you may meet, the most respectful and cordial manner, communicating frankly the objects of your cruise, and avowing your readiness to co-operate with them in securing the observance of treaty stipulations by the citizens of the respective countries.

It is confidently expected that there will be no interference with the lawful pursuits of the citizens of the United States. If, however, this just expectation should be disappointed, and you find that such interference has taken place, you will carefully collect the facts of the case, or cases, and report them immediately to me; or, if opportunity should offer, directly to the Secretary of the Navy; in which last case you will send a copy of your communication to the department to me.

"If on any occasion you discover attempts making to deprive any of our citizens of their just rights, you will respectfully, but firmly, remonstrate; and, if persisted in, you will take such steps as in your judgment will be best calculated to check and prevent such interference; never resorting to violence except as a matter of self-defence and security."

Wishing you a pleasant cruise, I am, very respectfully, your obedient servant,

WM. B. SHUBRICK,
Commanding Eastern Squadron.

Commander WHITTLE,
U. S. Ship Decatur, Eastern Squadron.

Commodore Shubrick to the Secretary of the Navy.

No. 10.]

U. S. STEAMER PRINCETON,
Halifax, Nova Scotia, August 5, 1853.

SIR: The Cunard steamer from Liverpool being due here this evening, I avail myself of the expected opportunity to report my arrival in this harbor, at 8 p. m., after having groped my way through rain and fog from Eastport, which place I left on Tuesday morning last.

After the exchange of due civilities with Vice Admiral Seymour, I shall have the honor to communicate further with the department.

I am, sir, very respectfully, your obedient servant,

W. B. SHUBRICK,
Commanding Eastern Squadron.

Hon. J. C. DOBBIN,
Secretary of the Navy, Washington, D. C.

Commodore Shubrick to the Secretary of the Navy.

No. 11.]

U. S. STEAMER PRINCETON,
Halifax, Nova Scotia, August 7, 1853.

SIR: In my despatch No. 10, of the 5th instant, I informed the department of my arrival in this port at 8 o'clock p. m. of the 4th.

All the day of the 5th was taken up in exchanging salutes with the civil, military, and naval authorities, and in visits of mere ceremony.

On the 6th I had an interview with Sir George Seymour, at his residence on the shore; of which I have the honor to make the following report:

I stated to the Admiral that I was instructed to seek an interview with him, and to express the great desire of the President that a cordial understanding should exist between the officers charged with the interests of the two governments; that I had been instructed to direct the officers of the United States squadron to be particular in warning the citizens of the United States engaged in the business of fishing to scrupulously avoid any violation of the stipulations of the convention of 1818, or of their duty as citizens; that the President could not take

the same view of the provisions of the treaty as that taken by her Majesty's government; to express his regret that a different view should have been taken by the Queen's government, and of his hope that force might not be resorted to against our fishermen in the bays and harbors, provided they avoided approaching within three marine miles of the shore, and particularly as it is known to her Majesty's government that the subject of the fisheries is at this moment a matter of negotiation between the United States and Great Britain.

Admiral Seymour expressed his entire concurrence with the government of the United States in its desire to avoid any cause of offence.

He stated that he did not feel at liberty to deviate from the interpretation placed by her Majesty's government on the first article of the convention of 1818; that his instructions to the cruisers under his command are, "to carry out the views of the government in the mildest manner, and not to make any seizure except in case of undoubted infraction of the treaty stipulations."

The Admiral stated that no seizure had been made this season, and that, with the instructions which he has given to her Majesty's cruisers, as above stated, and those which he understands to have been given to the cruisers of the United States, to report cases of supposed infraction to the commander of the squadron, or to the department, he hopes that no collision will take place, and believes that none can, except from the imprudence of individuals arising from an attempt to take the law in their own hands, or, in other words, arming in self-defense.

I enclose a copy of a report made by Lieut. Commanding Watson of his visit to Lubec.

The Cunard steamers stopping here only once a fortnight, and a letter by mail taking eight days to reach Washington, I have thought it advisable to send the Fulton with this despatch to Portsmouth, as, with her speed, she may be expected to make the passage in thirty hours at most.

I have instructed Lieut. Commanding Watson to remain at Portsmouth until he receives your instructions, and then, unless otherwise directed by the department, to return to his cruising grounds, looking in at this place for orders.

I send by the Fulton instructions for Commander Hollins, of the Cyane, a copy of which is enclosed with this.

The Fulton is much in want of a passed midshipman to supply the place of Mr. McGunnegle, condemned by medical survey before we left Portsmouth.

I have the honor to be, sir, your obedient servant,

W. B. SHUBRICK,
Commanding Eastern Squadron.

Hon. J. C. DOBBIN,
Secretary of the Navy, Washington, D. C.

[Inclosure.]

U. S. STEAMER FULTON,
Halifax, Nova Scotia, August 6, 1853.

SIR: In obedience to your orders of the 1st instant, I remained in the harbor of Eastport, Maine, until the morning of the 4th, at which

time I got under way for this place; but, owing to the dense fogs, did not arrive until 12 o'clock last night.

While at Eastport, I had an interview with Mr. Comstock, deputy collector of the port of Lubec, Maine, and also with the owners of several fishing vessels, who assured me that their vessels had met with no disturbance or obstruction this season, and that they were not armed. I also saw Mr. Nathaniel Mitchell, a merchant from Boston who had just been at St. John, New Brunswick, and he said that, as regarded the fisheries, all was quiet in that place; and I am thoroughly convinced that so far from any obstructions being thrown in the way of the fishermen this season, they are rather invited and welcome in the provinces.

Very respectfully, your obedient servant,

J. M. WATSON,
Lieutenant Commanding.

Com. W. B. SHUBRICK,
Commanding Eastern Squadron.

No. 14.]

U. S. STEAMER PRINCETON,
Halifax, Nova Scotia, August 16, 1853.

SIR: The Fulton not having arrived, and having effected as much as can be expected at Halifax, I have determined to go at once into the Gulf of St. Lawrence, and shall sail to-day.

I have not been able to get from Sir George Seymour, in so many words, exactly what his instructions to the commanders of his cruisers are; but I believe them to be, to seize vessels found fishing unquestionably within three marine miles of the shore, and to warn those within the headlands; but not to seize such, except they should be armed or show a disposition to resist. He has no new instructions, but is acting under those of last year. This he stated distinctly.

In conversation with Sir George on the 13th instant, he informed me that he had received a telegraphic communication from the commander of the Basilisk, that he had seized an American schooner for flagrant violation of the terms of the treaty. I said: "Within three miles, Sir George?" He smiled, and said: "For flagrant violation—it says nothing about your bays." Yesterday he showed me the communication of which he spoke on the 13th, and it was simply, as he had said, "for flagrant violation." The vessel is the schooner Starlight, of Gloucester, Massachusetts, and has been sent to Charlotte-town, Prince Edward Island, to which place I shall proceed at once and get the facts in some official form. I leave instructions for the Fulton to follow me.

I have the honor to be, sir, your obedient servant,

W. B. SHUBRICK,
Commanding Eastern Squadron.

Hon. J. C. DOBBIN,
Secretary of the Navy, Washington.

Consul Palmer to Commodore Shubrick.

CONSULATE OF THE UNITED STATES,
PRINCE EDWARD ISLAND AGENCY,
Charlottetown, August 29, 1853.

SIR: I have much pleasure in reporting to you that up to the present time there has been no cause of complaint, on either side, between the British cruisers and the United States fishing vessels off the coast of this island, during the present season.

There was, however, one vessel captured by her Majesty's steam-sloop *Devastation*, off the Canada coast, and brought into this port. Copies of the proceedings instituted against her I have the honor to enclose herewith. Doubts existed in my mind whether proceedings could be legally instituted in the vice admiralty court in this colony against a vessel captured in the Canadian waters; and, on drawing the attention of the crown officers to this point, after a long consultation, they concluded that, as the matter afforded a doubt, they would not run the risk of prosecuting here; and Captain Campbell informed me that he had no other alternative than to send the vessel to Quebec. However, after some persuasion, he offered that if the Captain of the *Starlight* would acknowledge his infraction of the law, and promise to be more careful in future, he should feel disposed not to be over-severe with him, particularly as he had subsequently conducted himself so well, and he was released on payment of the expense of the affidavits, &c.

In case no arrangements are made between the two governments with regard to the fisheries, which I should much regret, I should respectfully recommend that a small United States war steamer should be sent to this Gulf during the fishing season, for I have strong suspicions that some of the fishing vessels now come more or less armed; for, in conversation with a number of their masters last autumn, I heard some of them threaten that they would not be taken by a small cutter if they considered they were a match for her; and one of them did run against one of the small British cruisers last year, and the officer in command told me that he was satisfied it was done intentionally; and that at another time, one of the fishing vessels bore down upon him, and it was not until they observed the cutter prepare one of her guns that they altered their course.

I have the honor to be, sir,

Your most obedient and very humble servant,

HENRY PALMER,
Consular Agent for U. S. A. at P. E. Island.

Com. SHUBRICK,

United States War-ship Princeton, &c., &c.

92909°—S. Doc. 870, 61-3, vol 6 —20

[Inclosure.]

In the Court of Vice Admiralty, Prince Edward Island.

Our Sovereign Lady the Queen *against* The ship or vessel called the "Starlight," of Gloucester, (whereof Charles McDowell was master,) her tackle, apparel and furniture, and cargo, seized by Colin Yorke Campbell, esquire, captain in command of her Majesty's ship Devastation.

Appeared personally the said Colin Yorke Campbell and maketh oath, that he is captain in command of her Majesty's steam-sloop Devastation, and in or about the month of July last past, he, this deponent, received orders from the Admiral Sir George T. Seymour, K. C. B., G. C. H., commander-in-chief of the North American and West India stations, to cruise in the said steam-sloop, during the present season, in the Gulf of St. Lawrence, for the protection of the fisheries. That, from the said month of July up to the twelfth day of this present month of August, he, this deponent, hath been engaged in the said service. That on the sixth day of this present month of August, this appearer being in and on board of the said steamer-sloop, being nearly off Grand Valley, in Lower Canada, on the southern bank, near the mouth of the river St. Lawrence, and Grand Valley bearing about west-northwest from the said sloop, which was between one and two miles from the coast or shore of Lower Canada, observed from twelve to fifteen schooners, of and belonging to the United States of America, standing off from the shore of Grand Valley, and apparently within one mile of the said shore. That this appearer then caused the said steam-sloop Devastation to be put under all steam and steered direct for a schooner or vessel which was much nearer to the coast than any of the rest, and which afterwards proved to be the said vessel called the "Starlight." That the said steam-sloop came close up to the said vessel about twenty-five minutes after seven o'clock in the afternoon of the said sixth day of August instant, the said vessel being then between the "Devastation" and the coast. That this appearer then ordered Mr. John Way, the master of the said steam-sloop, to ascertain by cross-bearings the position of the said steam-sloop, which he did, and reported her to be distant about two miles from the shore, the said vessel called the "Starlight" being at that time about one hundred yards nearer to the shore than the "Devastation." That this appearer then proceeded on board the said vessel to ascertain whether or not the crew on board of her had been fishing, and found a number of fishing-lines on board of her wet and fresh baited, also a number of mackerel quite fresh, being newly split and salted, which Mr. Charles McDowell, the master of the said vessel, acknowledged to have been caught on that day, but said they had been caught fifteen miles off the coast. That there was a cask of bait open on the deck, and a quantity ground and in a liquid state in the boxes outside of the vessel, which had also the ladles in them. That there were two boxes containing salt upon the deck, which deck was wet in several places as if it had just been washed down, and the side of the vessel was quite wet as if the lines had just been hauled in; the fresh looking fish were covered up in the casks with articles of wearing apparel,

apparently for concealment, which appeared to have been thrown in in a very hurried manner. And this appearer further saith that the said vessel was then about two miles from the coast or shore of Lower Canada, having sailed at least a mile directly from the said coast from the time when this appearer first saw her. That this appearer, seeing such strong evidence that the said vessel had been fishing within three miles of the coast, hailed the said steam-sloop and desired Lieutenant Samuel George Rathbone to come on board the said vessel with eight men to take charge of her, which was accordingly done, and this appearer then returned to the Devastation. That this appearer then sent a boat from the said steam-sloop to a boat which was near to her, and in which was one Mr. Frederick Bond, of Quebec, merchant, who was passing down along the coast in his boat, and requested Mr. Bond to repair on board the Devastation. That Mr. Bond accordingly came on board of the said steam-sloop and informed this appearer that he was close into the Grand Valley, in his boat, when the Devastation hove in sight. That he saw a number of American vessels fishing there within a mile from the shore, and among them the said vessel called the "Starlight," which he saw actually engaged in fishing at the time, and that she was much closer in to the shore than any of the other vessels, and that when the Devastation hove in sight she made sail with the rest of the vessels and stood off the land. That this appearer having thus clearly ascertained that the master and crew of the said vessel had been palpably guilty of a flagrant violation of the treaty or convention made between his late Majesty King George the Third and the United States of America, signed at London on the twentieth day of October, A. D. 1818, ordered Lieutenant Rathbone, who, shortly before, he had placed temporarily in charge of the said vessel, with a midshipman and ten men, to take final charge of, and proceed with her to Charlottetown, in the said island, so that the said vessel might be handed over to the authorities of the said island for condemnation. That the enrollment or register of the said vessel hereunto annexed, marked A, and the codfishing license, marked B, also hereunto annexed, were both handed to this appearer by the said master of the said vessel called the "Starlight." That neither the name of the said vessel nor the place to which she belonged were painted on her stern, it appearing as if they had been recently erased.

[Inclosure.]

Master of the "Starlight" to Captain Campbell, British Navy.

CHARLOTTETOWN, August 15, 1853.

SIR: As you have, in command of her Majesty's ship Devastation, seized the vessel called the "Starlight," of Gloucester, United States of America, for breach of the convention of 1818 between Great Britain and the United States of America, and have expressed a willingness to discharge her on my acknowledging that I had, in her, broken the said treaty by fishing within three miles of the coast of Canada, and undertaking not to do so again hereafter, I therefore hereby admit the breach of the said treaty in manner as before

stated, and that thereby just cause was given you to seize the schooner or vessel which I command, called the "Starlight"; and I undertake that hereafter I will be more cautious, and will observe the said treaty or convention and not give the British government, so far as I am concerned, any cause of complaint in that respect.

Your obedient servant,

CHARLES R. McDOWELL,
Master of the Schooner Starlight.

To Captain COLIN YORKE CAMPBELL,
Her Majesty's Steam-ship Devastation.

Lieut. Commander Watson to Commodore Shubrick.

U. S. STEAMER FULTON,
Gaspe, Lower Canada, September 2, 1853.

SIR: In accordance with your instructions of the 29th ultimo, I have the honor to report that I received on board at Charlottetown, Prince Edward Island, Major General Gore, commander-in-chief of her Britannic Majesty's forces in Nova Scotia, and staff, hoisted the English flag at the fore, and proceeded to Pictou, where I landed them. General Gore expressed himself much gratified at your having placed the Fulton at his disposal.

After parting from you off the island of Pictou, I proceeded, according to your direction, along the north side of the island, in Miramichi bay, Chaleur bay, and to Gaspe, where I was in hopes of meeting you. It was my intention to have gone further up the Bay of Chaleur; but a heavy sea induced me to run for Gaspe. While there, her Britannic Majesty's steam sloop-of-war Argus, Captain Pervis, came in. Captain Pervis immediately came on board, and an interchange of civilities took place on the most friendly and courteous terms. Captain Pervis states that he has not had the least difficulty with our fishermen, with one exception, and that so slight as not to be taken notice of.

On my way to this place, I passed between five and six hundred fishermen; and, in my conversations with those I spoke to, there appears to be the greatest harmony existing between them and the inhabitants.

On coming to anchor here, I waited on the collector and authorities of the port; and their statements tend to confirm my previous reports, that, so far from any dissatisfaction being felt at our fishermen, they are welcomed on the coast, and nothing has yet transpired to alter my previously expressed opinion.

Very respectfully, I remain, your obedient servant,

J. M. WATSON,
Lieutenant Commanding, United States Navy.

Com. WILLIAM B. SHUBRICK,
Commanding Eastern Squadron.

Commodore Shubrick to the Secretary of the Navy.

No. 23.]

"PRINCETON," AT PORTSMOUTH, N. H.,
September 19, 1853.

SIR: My despatches from the 1st to the 14th, inclusive, have informed the department of the movements of this ship up to the 16th of August.

After leaving Halifax, I ran along the coast of Nova Scotia to the Strait of Canso, which I entered on the evening of the 17th, and anchored at Sand Point. On the next day I anchored successively at Pilot Cove and Ship Harbor. At each of these places diligent inquiry was made of the masters of American vessels, and, at the last, of our consular agent, in relation to the treatment of our fishing vessels by the armed vessels of other nations, and no instance was learned of any improper interference. Some cases were reported of vessels having been warned off who were found fishing or loitering within three miles of the shores.

It was thought advisable to make particular inquiry in this strait, as it is the passage through which great numbers of vessels pass, and where wood, water, and other supplies are obtained; and although there were not many Americans in it at the time of our visit, I was informed by the consular agent that in the course of the last year eleven thousand vessels, of all kinds, were counted passing through both ways, and some must have passed in the night who were not counted.

From the Strait of Canso I went to Pictou. This port is the residence of the consul of the United States for the north coast of Nova Scotia, to whom complaints of interference would naturally be made, if any should be experienced within the limits of his consulate; but he had heard of none.

From Pictou I crossed over to Charlottetown, Prince Edward island, and inquired into the case of the schooner "Starlight," seized by her Majesty's steamer Devastation; the official papers in relation to which were forwarded with my despatch No. 15.

The Fulton having joined me at Pictou, accompanied me to Charlottetown, that some slight repairs might be made to her machinery, under the direction of chief engineer Shock. She was despatched on the evening of the 29th August, under instructions; copies of which accompany this.

Leaving Charlottetown, it was found necessary to anchor in the outer harbor of Georgetown, in order to make some repairs to the engine of the Princeton—the necessity of which was not discovered until after we had left Charlottetown, but which, fortunately, could be done by our own engineers.

On the 2d September, at meridian, we anchored in Gaspé bay, Lower Canada, having, in the course of the night and morning, passed through many hundreds of fishing vessels, showing generally American colors. These were all fishing outside the bays. The ship passed slowly through them, with her colors set, but it was deemed best not to interrupt them in their fishing by boarding or running so near as to hail. If any one of them had complaint to make, communication could be easily had with the ship, and the slightest inti-

mation of such a wish would have been immediately attended to, but none was made.

The *Fulton* was at anchor in the inner harbor. A copy of Lieutenant Commanding Watson's report of his proceedings, under my orders of the 29th ultimo, is with this.

Soon after I anchored at Gaspe, I was informed that the anchorage, which I had taken by advice of my pilot, was unsafe, if it should blow a gale from the east—of frequent occurrence at this season. No pilot could be found to take so large a ship into the inner harbor, and, as night was approaching, I got under way and put to sea with both vessels. It had now become necessary to replenish our coal, and I determined to go to Sydney, in Cape Breton island, for that purpose.

I arrived at Sydney on the 4th, the *Fulton* in company, and, after taking on board a supply of coal for each vessel, put to sea again on the morning of the 9th.

After a passage protracted by strong head winds, and a part of the time by thick weather we anchored at St. John, New Brunswick, on the afternoon of the 13th.

A large number of persons, estimated at fifty thousand, were congregated at this place to witness the ceremony of breaking ground for the European and North American railway. The occasion had brought the lieutenant governor of the province, Sir Edmund Head, to St. John. We received from the lieutenant governor, and the authorities of the city the most cordial welcome, and every hospitality was extended to us, nationally and individually.

The absence from St. John of the consul for the United States prevented my getting any official information on the subject of the fisheries; but from no source could I learn that there had been any occurrence of an unpleasant nature; and by all persons, official and private, here as in the other provinces, a most anxious desire was expressed that the rights and privileges of the citizens of the United States, and of the inhabitants of the provinces, in relation to the fisheries, might be so distinctly defined, and so authoritatively announced, that there should be no room for misunderstanding, and no possible cause for irritation on either side.

I left St. John on the morning of the 17th instant, the *Fulton* in company, and anchored outside of this harbor on the evening of the 18th, in a dense fog. This morning we have succeeded in getting to a good anchorage, off Fort Constitution.

It is with great diffidence that, from the experience of so short a cruise, prosecuted, as is known to the department, under circumstances of unusual embarrassment, I offer a few suggestions as to the description of force most suitable for the protection of the fisheries, and as to the time most proper for its operations.

Some of the most valuable fisheries, such as those in Miramichi bay, Chaleur bay, and north as far as Gaspe, are carried on in small vessels and open boats, and close in shore. If, therefore, the privilege to fish in those bays is to be maintained by us, the vessels for that service should be small steamers of light draught of water. The shores of Prince Edward island abound with fish of all kinds. The mackerel strike in early in the season, and can only be taken close in shore.

The fishing season around the Magdalen islands, through the Strait of Belleisle, down on the coast of Labrador, commences early in June. The herring fishing commences in George's Bay, Newfoundland, as early as April, and continues about a month. After that, the fishing on that coast is only for mackerel and cod; and it is to be remarked, that where mackerel is found, cod is also abundant. These fisheries are carried on in vessels of larger size, but still of easy draught of water; and the vessels intended for their protection should also be of easy draught.

The coasts of Nova Scotia, New Brunswick, the south side of Prince Edward island, Cape Breton, Newfoundland, and Labrador, abound in good harbors, some of them capable of receiving and accommodating large navies; but there are numerous harbors to which the fishing vessels principally resort, which will not admit vessels of heavy draught; and where the protected go, the protector should be able to follow. The narrow passages, the strong and irregular currents, and the frequent fogs and thick weather with which the navigator has here to contend, point emphatically to steamers as the best force for this service.

One steamer of suitable size for the commanding officer, and two or three of smaller size and easier draught, having speed and power, with light armaments, would be sufficient for all the purposes of this station. Coal, at a low price and of suitable quality, could be contracted for at Sydney or at Pictou, both within the limits of their station; and the commanding officer having his headquarters at Portland or at Eastport, might control their movements, and make occasional visits to the different fishing grounds himself.

The establishment of such a squadron would, I know, give great satisfaction to the citizens of the United States all along the coast from Boston to Eastport; of this we had unequivocal evidence in our reception at every port where we touched. It would afford also an opportunity for the introduction into the navy of numbers of the hardy sons of New England, who, from rarely seeing a vessel of war, have imbibed unfavorable impressions of the public service. An infusion into the lower ratings of persons drawn from such a population would elevate the character of the service, and enable it to maintain a discipline founded on good sense, moral rectitude, and patriotism.

The smaller vessels should be—one on the coast of Labrador, about Newfoundland; one about the Magdalen islands, Cape Breton, and the Strait of Canso; and the other from Pictou, Prince Edward island, and up as far as Gaspe, Lower Canada—all to leave the United States by the first of June, and return by the last of September.

It would not be advisable for any of the vessels to remain in the Gulf of St. Lawrence after the 15th of September: the gales by that time become frequent and severe; sharp frosts commence, and the tops of the Gaspe mountains are generally covered with snow by the first of October. The north side of the Bay Chaleur has been known, I am informed, to be frozen to some extent by the middle of September.

I should do injustice to the excellent officer in command of the Princeton, Commander Henry Eagle, if I failed to make known to the department the able and cheerful assistance in the execution of my

duties that I have received at all times from him, and from the accomplished officers under his command.

The *Fulton*, Lieutenant Commanding Watson, has been most actively employed, a great part of the time under my own eye. She has been managed with great judgment; and I am under obligations to her commander and officers for the alacrity with which my orders have always been carried out.

The *Cyane* and the *Decatur*, though cruising under my instructions, have not been with me. The reports of Commanders Hollins and Whittle are doubtless before the department; and, from my knowledge of those officers, I feel that they will be perfectly satisfactory.

Since writing the above, the report of Commander Hollins has been received, and is herewith enclosed.

I have the honor to be, sir, your obedient servant,

W. B. SHUBRICK,
Commanding Eastern Squadron.

HON. J. C. DOBBIN,
Secretary of the Navy.

PERTAINING TO THE SITUATION IN 1870.

Mr. Fish to Mr. Boutwell.

DEPARTMENT OF STATE,
Washington, April 23, 1870.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

SIR: I have the honor to enclose a copy of House of Representatives Ex. Doc. No. 239. 2d session, 41st Congress, and of a communication of the 14th instant, from the British Minister, relating to the measures adopted, and proposed to be adopted, by the Authorities of the Dominion of Canada, for the exclusion from certain of the inshore fisheries within the jurisdiction thereof, of foreign fishermen. I beg leave to suggest, that with a view to fully acquainting citizens of the United States interested in the fishing business in waters adjacent to the Dominion of Canada, these facts that a circular be issued at your earliest convenience to Collectors of the Customs at the ports of the United States in which fishing vessels are fitted out or to which they resort, enclosing to each of them, a sufficient number of copies of a printed notification for distribution among the fishermen and the business firms interested in the subject, setting forth the material facts presented in the enclosed papers, and putting them on their guard against committing acts which would render them liable to the penalties prescribed by Canadian Laws, respecting inshore fisheries not open to the fishermen of the United States under the 1st Article of the treaty between the United States and Great Britain of 1818.

I have the honor to be, Sir, Your obedient Servant,
HAMILTON FISH.

[Inclosure.]

(H. R. Ex. Doc. No. 239, 41st Congress, 2d session.)

Fisheries in British waters.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES IN ANSWER TO
A RESOLUTION OF THE HOUSE OF THE 7TH ULTIMO RELATIVE TO FISHERIES IN BRITISH WATERS.

[April 6, 1870.—Referred to the Committee on Foreign Affairs and ordered to be printed.]

To the House of Representatives:

In answer to the resolution of the House of Representatives of the 7th instant, relating to fisheries in British waters, I transmit a report from the Secretary of State and the papers which accompanied it, and I have to state that the commanding officer of the naval steamer ordered to the fishing grounds will be instructed to give his atten-

tion, should circumstances require it, to cases which may arise under any change which may be made in the British laws affecting fisheries within British jurisdiction, with a view to preventing, so far as it may be in his power, infractions by citizens of the United States of the first article of the treaty between the United States and Great Britain of 1818, the laws in force relating to fisheries within British jurisdiction, or any illegal interference with the pursuits of the fishermen of the United States.

U. S. GRANT.

WASHINGTON, *March 31, 1870.*

[Inclosure No. 1.]

DEPARTMENT OF STATE,
Washington, March 31, 1870.

The Secretary of State, to whom was referred the resolution of the House of Representatives of the 7th instant, in the words following—

“Whereas it has been officially announced that it is not the intention of the Canadian authorities to issue licenses to foreign fishermen for the privilege of the inshore fisheries of the Canadian coasts during the ensuing year, and that arrangements would be made to protect the rights of Canadian fishermen by the employment of a number of vessels as a marine police, which are to cruise about the fishing grounds:

“*Resolved*, That the President be requested to communicate to this House, if not incompatible with the public interests, any information in his possession as to the determination of the Canadian authorities in the matter of the fisheries in the Gulf of St. Lawrence and coasts of Canada; and whether any steps have been taken for the protection of the interests of American citizens engaged in the fishing trade on said coasts, and securing to them the privileges which they have heretofore enjoyed in the inshore fisheries thereof—”

has the honour to state that, on the date of the receipt of the attested copy of said resolution at this department, no information of any such decision as that described in the preamble of said resolution had been officially communicated to this department; and that, up to the present time, none has been officially communicated through the British minister accredited to this government, nor through the minister of the United States at London. That on the 12th instant, in the absence of such information, application was made to William A. Dart, esq., the consul general of the United States at Montreal, for a statement of the facts; in reply to which, on the 17th instant, he addressed to the department the dispatch No. 57, an extract from which is herewith submitted, forwarding with it the accompanying newspaper report of a debate in the Parliament of the Dominion of Canada, referred to therein. That on the 22d instant the same consul general, with a dispatch numbered 59, inclosed a copy of a bill introduced into the same Parliament, which had passed to a second reading on the 22d of February last, an extract from which dispatch, with a copy of the bill referred to, accompanies this report. That these communications contain all the information in the premises which has reached the department through official channels. Informal telegraphic reports or summaries to the same effect have, however, appeared in the public prints.

With reference to the steps taken to protect the interests of citizens of the United States, and to secure to them the privileges which they have heretofore enjoyed in the inshore fisheries, it is proper to state that, in the absence of any official announcement from the British government of a proposed change in the practice of granting licenses to foreign fishermen, this department is not aware of any steps having been taken in anticipation of such a contingency; but on learning that stringent measures might be adopted by the authorities of the Dominion of Canada to exclude all foreign fishing vessels from the inshore fisheries unless provided with licenses, the Secretary of the Navy was directed by the President to cause a small, active naval steamer to be sent, at the beginning of the approaching fishing season, to the waters in which these fisheries are chiefly carried on, for purposes of warning and protection to the fishermen of the United States.

Respectfully submitted.

HAMILTON FISH.

The PRESIDENT.

[Inclosure No. 2.]

No. 57.]

Mr. Dart to Mr. Fish.

CONSULATE GENERAL UNITED STATES AMERICA,
FOR THE BRITISH NORTH AMERICAN PROVINCES,
Montreal, March 17, 1870.

SIR: I have the honor to transmit herewith a copy of the Montreal Herald, of the 12th instant, containing the report of a debate in the Dominion Parliament upon the subject of Canadian fisheries, wherein Sir John A. Macdonald stated, "that, as he had already announced, it was the intention of the government to issue no more licenses to foreign fishermen, and they were taking every step possible to protect our fisheries." The paper contains the debate at length for that day.

* * * * *

I have the honor to be, sir, very respectfully, your obedient servant,

WILLIAM A. DART,
Consul General.

Hon. HAMILTON FISH,
Secretary of State, Washington.

[Inclosure No. 3.]

Debate 7th March, in House of Commons, Ottawa.

[From the Montreal Weekly Herald, March 12, 1870.]

PROTECTION OF CANADIAN FISHERIES.

Mr. Coffin asked whether the American government have been notified by the Dominion government that it is their intention to place an armed force on Canadian waters for the protection of Canadian fishermen.

Sir J. A. Macdonald said there had always been an armed force supplied by her Majesty's government for the protection of British

fishermen. The Canadian government had no reason to believe that that force would be withdrawn, and therefore had no intention of putting on an armed force of its own. It was the intention of government to have a certain number of police vessels there for the enforcement of law in those waters.

Debate 9th March, in House of Commons, Ottawa.

Mr. Coffin moved an address for correspondence respecting depredations committed by American fishermen in Canadian waters. He said that it was necessary to know whether we were to have an efficient protection from the British government in this matter. He believed that that protection had for some time been a farce, and he did not think due attention had been paid by the British government to the protection of the seacoasts of the Dominion. It was also important that the American government should know what we are about. He wanted to have justice done on both sides. From 1851 to 1854 the Nova Scotian government had protected its fishermen so that American fishermen complained to their government, who sent a force to protect American fishermen. The officers were honorable men who afforded the people protection, and Nova Scotia fishermen were then more properly protected than now. He thought some good result might follow a similar course now.

Dr. Robitaille said that the answers given by government to some question of his on the same subject were not satisfactory to him. They had said they had no control over the vessels of the royal navy; that was quite true; but last session they had promised that an arrangement would be made for having two or three vessels of the royal navy to protect our fisheries. Such vessels had not protected our fisheries—at any rate, in the Bay Chaleurs, nor had the schooner *La Canadienne*. This was not the fault, he was sure, of the commander of that schooner, whom he knew to be a very efficient officer, and if he had had instructions to go to the Bay of Chaleurs he would have done so. With reference to another question, he would repeat that depredations had been committed on our shores by American fishermen—some of them within a few miles of his own residence. They had stolen boats belonging to our fishermen, and had in other ways acted in a barbarous manner. The answer of the government was that the local authorities ought to have seen that the law was respected. Why, in one harbor he had seen no less than two hundred and thirty American schooners, manned by sixteen or twenty men each, sometimes not less than twelve or fifteen hundred of these men on shore at one time. How could the local authorities, who had no police force at their command, see that the law was respected? These American fishermen were supposed to hold licenses, but it was a fact that not one-eighth of them had licenses. There was no one to see that they had licenses, and they all passed as holding licenses, and as therefore entitled to come on shore. In view of these facts it was certainly not very satisfactory to be told by government that the local authorities should protect themselves.

Sir J. A. Macdonald thought that if the honorable gentleman had heard the answers of government *in extenso*, he would not have spoken as he did. His answer was that the steamer of the royal navy

was not employed to protect the Bay of Chaleurs alone, but the whole of the Canadian fisheries. That steamer had been twice in the bay of Chaleurs during the season, and had been continuously employed in performing its duty on some portion of the coast the entire season. Government of course had no control over the steamers of the royal navy. He believed the instructions from the admiralty were such as to render any active service in the way of protecting our fishermen impossible. Three warnings and twenty-four hours' notice were required in order to prevent complications such as arose before 1854. The Canadian government had not been wanting in remonstrating against these restrictions. He was happy to believe that her Majesty's fleet in our waters would not be diminished, but perhaps increased. *As he had already announced, it was the intention of government to issue no more licenses to foreign fishermen, and they were taking every step possible to protect our fisheries.* They would have such a force as the imperial government chose to place in our waters to back up our own schooners, which would act as a marine police. With respect to the motion before the House, part of the correspondence with the imperial government he had already promised to bring down. If there was any correspondence respecting the alleged depredations it should be brought down.

Sir A. T. Galt said it was evident from the references made to this question that the House should be in possession as soon as possible of the correspondence that had taken place between the Canadian and imperial governments. It was certain that the question of fisheries, in connection with America, had in former years been a source of very great complication and danger to the relation between Great Britain and the United States. It was very important that the House should know the grounds on which they based their charge of policy in this respect, and a material force by which it was to be sustained. In the absence of correspondence he was unwilling to express his own opinion on the subject. He looked upon this as the most serious question that could engage the attention of the House—one upon which it was absolutely essential that this government and the imperial government should be in perfect harmony. The responsibility must not devolve on our government alone; it involved consequences much too important to the well-being of this country and of the mother country as well as of the United States to be dealt with without full consideration of its gravity and importance.

Sir J. A. Macdonald said that the duty of the Canadian government extended only to affording protection to our fishermen while in Canadian waters. If any Americans, whether sailors or fishermen, in fishing or trading vessels, come on shore and commit an assault or trespass, the Dominion government had nothing whatever to do with the matter. In fact, it had no power or authority to protect the inhabitants. That must be done by local authorities of the government, who had full control over the administration of justice.

Sir A. T. Galt said that it would probably be better to have the discussion on this subject when the proposal was before the House. He might mention that there was a difficulty in connection with this delicate question which no doubt would come under consideration, and that was as to the fixing of the rightful boundaries. Some difficulty arose on account of the head-lands.

Dr. Robitaille said that what he understood as the substance of the remarks of the honorable minister of justice was that the Canadian government could not protect the fishermen, and the imperial government was not willing to do so.

Dr. Tupper said he wished to enter his protest against the statements made by an honorable member of the House, which would damage the rights of our fishermen, namely, that we were not ready and able to protect them.

Mr. Fortin thought that the government would this time keep faith with the announcement it had made. He was glad it had at last announced the policy of refusing to grant licenses to American fishermen. This refusal was better late than never. It was only right that American vessels should be treated in Canadian waters in the same way that our vessels are treated in theirs. Let any Canadian vessel go within three miles of the American coast, and remain for days and days, as theirs did in our harbors, and it would be taken by the officers and sold, and would never be got back again. It was a perfect scandal the way the American fishermen came and fished on Sunday while our people were at church.

Mr. Huntington would like to know from the member for Cumberland (Dr. Tupper) whether or not the government of Nova Scotia, to which he belonged, had not inaugurated the license system.

Dr. Tupper said it had not, but had resisted the scheme to the last. It was only after the combined influence of both Great Britain and Canada was brought to bear that they yielded the point, and then only on the declaration of both governments that it should be only for one year. The honorable member could find this fully stated in the journals of the legislature.

Mr. Huntington had not put the question to embarrass the honorable member, but merely to elicit this reply, which he had expected. It appeared to him that the honorable member for Sherbrooke had fairly stated the position of the question, and that in the absence of the correspondence it was not right to enter into any violent or extreme language on the subject before the House.

Mr. Howe's opening remarks were inaudible in the gallery. He said he quite agreed with the honorable member for Sherbrooke respecting prematurely discussing this question before papers were brought down. This was a question of so much importance and so much delicacy that it ought to be discussed with patriotic feeling by them, as British Americans anxious to maintain our territorial rights, but at the same time to act with such delicacy and discretion as to have the support of the national power behind us.

Mr. Mackenzie thought the House favored a conciliatory policy toward our neighbors, who must be our neighbors for all time to come; and that to precipitate a needless collision with the neighboring power would be to be guilty of a most criminal act. He entirely agreed with the observations of the honorable secretary of state.

Mr. Dorion said it was evident from the remarks of the honorable secretary of state that we were not in such a position as to discuss this question. The other day the leader of the government declared that the policy of the government was to refuse any more licenses to American fishermen. To-day he (Mr. Dorion) inferred from the remarks of the honorable secretary of state that such a policy had not received the concurrence of the British government. He had

inferred from the honorable secretary of state's remarks that an incautious policy might get the imperial government into trouble in this matter. He would like to know if the Canadian government had a promise of the assistance of the imperial government excluding American fishermen from Canadian waters, for it was not to be expected that La Canadienne would drive away some eight hundred American vessels.

The motion was then passed.

[Inclosure No. 4.]

DEPARTMENT OF STATE, *Washington, April 4, 1870.*

SIR: As it may be desirable for the committee of which you are chairman, and for others interested in the subject, to have at hand the act of the Canadian Parliament respecting fishing by foreign vessels, I do myself the honor to inclose a transcript of that act, copied here from the official publication of the statutes of Canada.

I have the honor to be, sir, your very obedient servant,

HAMILTON FISH.

HON. NATHANIEL P. BANKS,

*Chairman of the Committee on Foreign Affairs,
House of Representatives.*

[Inclosure No. 5.]

An act respecting fishing by foreign vessels. (Assented to May 22, 1868.)^[a]

[Inclosure No. 6.]

Mr. Dart to Mr. Fish.

[Extract.]

MONTREAL, *March 22, 1870.*

* * * * *

I have the honor also to transmit herewith * * *

6. An act respecting fisheries, (proposed act.)

I have, &c.,

WILLIAM A. DART,
Consul General.

[Inclosure.]

[Proposed act.]

An act to amend the act respecting fishing by foreign vessels.

Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to amend the act entitled "An act respecting fishing by foreign vessels," passed in the thirty-first year of her Majesty's reign; therefore her Majesty.

[^a For this act, see p. 133, U. S. Case Appendix.]

by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

I. The third section of the above-cited act shall be, and is, hereby repealed, and the following section is enacted in its stead:

3. Any one of such officers or persons as are above mentioned, may bring any ship, vessel, or boat, being within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel, or boat be foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and have been found fishing or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above-mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.

11. This act shall be construed as one with the said act respecting fishing by foreign vessels.

The bill is endorsed on the back: 3d Session, 1st Parliament, 33 Victoria, 1870. C. Bill. An act to amend, etc.

Received and read first time, Thursday, 17th February, 1870.
Second reading, Tuesday, 22d February, 1870.

RELATING TO THE TREATY OF 1871.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *June 19, 1873.* (Received June 19.)

SIR: In compliance with instructions which I have received from Earl Granville, I have the honor to transmit herewith copy of an act which has been passed by the legislature of Newfoundland to carry into effect articles 18 to 25 of the treaty of May 8, 1871. I am at the same time instructed to inquire whether the President of the United States will be prepared on the 1st of July next to issue a proclamation with reference to Newfoundland, in accordance with the 2d section of the recent act of Congress relating to the treaty of Washington.

In that case, the governor of Newfoundland would be instructed to issue a similar proclamation, fixing the day on which the act and the articles of the treaty applicable to Newfoundland shall take effect in that colony.

I am, therefore, instructed to propose to you to sign a protocol with regard to Newfoundland similar to that which I had the honor to sign with you on the 7th instant, with the addition of a clause following as nearly as possible the proviso at the end of the first article of the Newfoundland act, namely, that the laws, rules and regulations of the colony relating to the time and manner of prosecuting the fisheries on the coast of the island shall not in any way be affected by the suspension of the laws of the colony which operate to prevent articles 18 to 25 of the treaty of Washington from taking full effect during the period mentioned in the 33d article of the treaty.

With respect to the day on which the above mentioned articles should take effect in Newfoundland, Lord Granville has been informed by the colonial office, that, under the imperial act of the last session of Parliament, relative to the fishery articles of the treaty, the governor of Newfoundland can only issue his proclamation extending those articles to Newfoundland during the suspension of certain acts of Parliament, which acts will only be suspended when the act of Congress of the United States shall have come into force. As this will not take place until the 1st of July, it appears that the governor's proclamation cannot be issued before that date, and the protocol should therefore fix the 2d or 3d of July as the day for bringing the articles of the treaty into effect in Newfoundland.

I have, &c.

EDW'D THORNTON.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, June 20, 1873.

SIR: With reference to my note of yesterday's date and to our conversation upon the subject of the Act passed by the Legislature of Newfoundland for carrying into effect Articles 18 to 25 of the Treaty of May 8, 1871, I have the honour to state that from a report^[a] made by the Attorney General of Newfoundland to the Governour it would appear that the Proviso at the end of Section 1 of that Act has reference to the time for the prosecution of the Herring fishery on the Western Coast of the Island and was merely intended to place citizens of the United States on the same footing with Her Majesty's subjects in that particular so that the rules and regulations imposed upon the Newfoundland Fishermen with regard to that fishery might also be observed by American Fishermen. The Newfoundland House of Assembly has been prorogued and will probably not meet again this year.

I have the honour to be with the highest consideration, Sir, Your Obedient Servant,

EDWD THORNTON.

The Honourable HAMILTON FISH,
etc., etc., etc.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, 25 June 1873.

SIR: I have the honour to acknowledge the reception of your note of the 19th instant transmitting in compliance with instructions from Earl Granville, a copy of an Act passed by the Legislature of Newfoundland to carry into effect Article 18 to 25 of the Treaty of May 8, 1871. In this note you state that you are instructed to inquire whether the President of the United States will be prepared on the 1st of July next to issue a Proclamation with reference to Newfoundland in accordance with the 2nd section of a recent Act of Congress relating to the Treaty of Washington.

An examination of the Act passed by the Legislature of Newfoundland discloses that the suspension by that Legislature of the laws which operate to prevent the Articles referred to of the Treaty from taking full effect, is qualified, and is accompanied by a proviso that certain laws, rules and regulations relating to the time and manner of prosecuting the fisheries on the coasts of Newfoundland, are not to be in any way affected by such suspension.

From your note of 20th instant—I understand that from a Report^[a] made by the Attorney General of Newfoundland to the Governor, it would appear that the proviso referred to contemplates a restriction in point of time, of the herring fisheries on the western coast of the island.

The Treaty places no limitation of time, within the period during which the Articles relating to the fisheries are to remain in force,

[^a A copy of this report has not been received by the United States.]

either upon the right of taking fish on the one hand, or of the exemption from duty of fish and fish oil, (as mentioned therein).

I regret, therefore, that the Act of the Legislature of Newfoundland, which reserves a right to restrict the American right of fishing, within certain periods of the year, does not appear to be such consent on the part of the Colony of Newfoundland to the application of the stipulations and provisions of Articles 18 to 25 of the Treaty, as is contemplated by the Act of Congress to which you refer, and in accordance with which the Proclamation of the President is to issue.

I have the honour to be, with the highest consideration, Sir, your obedient servant

HAMILTON FISIL.

The Right Honourable Sir EDWARD THORNTON, K. C. B.,
&c. &c. &c.

Sir Edward Thornton to Mr. Davis.

WASHINGTON, 30th July 1873.

SIR: With reference to my Note of the 19th ultimo, and to Mr. Fish's note of the 25th ultimo relative to the carrying into effect with regard to Newfoundland of certain articles of the Treaty of 8 May 1871, I venture to offer to you some further observations upon the subject, which I should feel much obliged if you would communicate to Mr. Fish, in the hope that he may take into his friendly consideration some arrangement for the complete carrying into effect of the Articles of the Treaty with respect to that Colony.

In the first place I should observe that the "laws, rules and regulations" referred to in the Proviso of the 1st Section of the Newfoundland Act transmitted in my note above mentioned, were intended to benefit American as well as English fishermen, and were necessary for the preservation of herring and salmon. These laws are already in existence, and the proviso does not refer to any further restrictions; I have now the honor to inclose copies of the laws themselves. It does not appear therefore that these laws need form an obstacle to the admission of Newfoundland to the participation of benefits arising from the action of a Treaty stipulation, the operation of which is still prospective as far as Newfoundland is concerned, whilst on the other hand citizens of the United States have since the season of 1871 enjoyed the right of fishing in the waters of that Colony,—a not inconsiderable right stipulated for by the Treaty.

In connexion with the same subject I venture to inclose a report addressed by the Crown Law Officer of Newfoundland to the Governor, from which I trust that the Government of the United States will be satisfied that there was no other intention on the part of the Legislature of the Colony than to accept unreservedly the provisions of the Treaty, only leaving in force such regulations as were to be observed by both English and American fishermen, and were to the advantage of both parties.

I have the honor to be with the highest consideration Sir Your obedient servant

EDWD THORNTON

The Honorable J. C. BANCROFT DAVIS,
etc. etc. etc.

[Inclosures in Sir Edward Thornton's note.]

ST. JOHNS, NFLAND, July 14, 1873.

SIR: I had the honour on the 4th instant to advise Y. E. & to submit draft for telegram, upon the bearing & effect of the proviso to the first section of the local statute of last Session of the Legislature entitled "An Act relating to the Treaty of Washington 1871" which proviso is considered objectionable by the Govt. of the U. S.

I then expressed the opinion that while the clause was unnecessary, I believed that, if rightly understood by the U. S. Auth^s it would be considered unobjectionable. I have now by Y. E.'s command to report more fully upon the matter.

In the first place it will probably be conceded by the Govt. of the U. S., that the exercise of Treaty rights is at all times subject to such fair and reasonable Police or Municipal regulations of the State within which they are to be exercised as are common to all, and not inconsistent with the bona fide operation of the stipulations of the Treaty.

The proviso would in this view be quite unnecessary and therefore harmless but it will also be observed that it is not prospective in its terms, but has reference solely to the *Status quo* of the fisheries, to w^h it applies, at the time of the ratification of the Treaty by the High Contracting parties—it runs thus—

"Provided that *such laws* rules and regulations relating to the time and manner of prosecuting the fisheries on the Coasts of this Island shall not be in any way affected by such suspension."

The laws referred to in this proviso as *such laws* are and can from the language be none other than the laws mentioned in the former part of the same section, vizt. "the laws of this Colony which operate to prevent the said Articles from taking full effect" and which are to be suspended. The whole clause is with regard to this question in the present tense.

Copies of those existing laws are annexed to this despatch—they are acts passed respectively in the years 1860 and 1862, and regulate the contrivances for taking Herring and Salmon and the mode and time for using those contrivances.

These provisions are shown by experience to have been necessary for the preservation of those fisheries and consequently for the common interest of all engaged in them; the only regret is that they are not so effective as could be desired, and I may add that it would be for the advantage of the subjects of any State having an interest in the prosecution of those fisheries if the observance of those regulations were more rigidly enforced.

It will be seen that the Act of 1862 for the protection of the Herring and Salmon Fisheries contains this Section (No. 10)

"Provided always that nothing in this Act contained shall in any way affect or interfere with the rights and privileges granted by Treaty to the subjects or citizens of any State or power in amity with Her Majesty".

By the second section of our Washington Treaty Act the Governor in Council has the fullest powers to make orders "to give full effect to the Treaty" in accordance with its spirit and intention.

The Treaty of Washⁿ Act of the Congress of the U. S. enables "the produce of the fisheries of this Colony to be admitted into the U. S. free of duty" from and after the date of a Proclamation by the Pres^t of the U. S. declaring that he has satisfactory evidence that the Colony of Nfland has consented in a due and proper "manner to have the provisions of the said Articles 18 to 25 inclusive of the said Treaty extended to it."

If it has not been already done, I venture to express the belief that after explanation made and view had of the copies of the local enactments to which the proviso refers and with the powers vested in the Governor in Council & w^h Y. E. is prepared to exercise to the fullest extent, no further objections will be raised on the part of the Treasury Dept. of the U. S. to giving effect to the Treaty in favour of this Colony & that the President of the U. S. will be of opinion that there is no substantial objection to the issue of the proclamⁿ provided by the Act of Congress.

Subjects of the States are now in the actual exercise & enjoyment on this Coast of the privileges conceded to their Gov^t by the Treaty & our Merchants justly feel aggrieved that the Customs Auth^s of the U. S. decline to admit into the Ports and Markets of that Country their shipments of the produce of the Fisheries of Nfland duty free.

I have &c

(Sd)

ROBERT I. PINSENT

Queen's Counsel

H^o Governor HILL C. B.

&c. &c. &c.

Schedule of Documents attached

1. An Act for the protection of the Salmon Fish^y of this Colony & for other purposes A. D. 1860. [23 Vict. Cap. 8]^a

2. An act for the protection of the Herring and Salmon Fisheries on the Coast of this Island & for other purposes A. D. 1862. [26 Vict. Cap. 2.]^b

3. An Act to amend above A. D. 1866. [29 Vict. Cap. 11]^c

4. An Act relating to the Treaty of Washington 1871 A. D. 1873. [36 Vict. Cap. 3]^d

^a Supra, p. 83.

^b Supra, p. 84.

^c Supra, p. 86.

^d Supra, p. 86.



RELATING TO PAYMENT OF THE HALIFAX AWARD.

Mr. Evarts to Mr. Welsh.

Private.

DEPARTMENT OF STATE.
Washington, November 4, 1878.

JOHN WELSH, Esquire,
&c., &c., &c.

DEAR SIR: I write merely to inform you that while I reserve entirely the question of the payment of the Halifax award as yet to be determined, yet I have taken care to have the remittance made.

The last parcel of exchange went forward by steamer of last Saturday, and Morton Rose & Co. have in their hands the means of commanding \$5,500,000 in American gold.

This remittance has been made so as not to attract attention or affect the exchanges, and Morton Rose and Co. have not yet been advised to what credit or by what means of withdraw the money is to go.

In case the reply of the British Government should seem to warrant the payment of the award, the money will be placed at your disposal for that purpose and you will be advised in due season of the course to be taken.

I am, Yours very truly.

WM. M. EVARTS.

Mr. Evarts to Mr. Welsh.

No. 173.]

DEPARTMENT OF STATE,
Washington, November 8, 1878.

SIR: The question of the payment of the amount awarded by the Halifax commission is still held under consideration, and may be till the last moment. You will receive timely instructions by telegraph for your guidance in any aspect of the matter which may be presented.

In the meantime it is not foreseen that the payments, if finally resolved on by this government, could under any circumstances be properly made, without being accompanied by a formal notice of the grounds upon which the payment is made, without any change of views on our part respecting the award and the positions this government has assumed in its correspondence with the British Government on the subject.

I therefore inclose a form of notice and protest, with which you will accompany the payment of the money should you be instructed to make such payment.

I am, &c.

WM. M. EVARTS.

[Inclosure.]

Form of notice referred to.

MY LORD: I have been instructed by the President of the United States to tender to Her Majesty's Government the sum of \$5,500,000 in gold coin, this being the sum named by the two concurring members of the Fisheries Commission (lately sitting at Halifax under authority imparted thereto by the treaty of Washington) to be paid by the Government of the United States to the Government of Her Britannic Majesty.

I am also instructed by the President to say that such payment is made upon the ground that the Government of the United States desires to place the maintenance of good faith in treaties and the security and value of arbitration between nations above all questions in its relations with Her Britannic Majesty's Government as with all other governments.

Under this motive the Government of the United States decides to separate the question of withholding payment from the considerations touching the obligation of this payment, which have been presented to Her Majesty's Government in correspondence, and which it reserves and insists upon.

I am, besides, instructed by the President to say that the Government of the United States deems it of the greatest importance to the common and friendly interests of the two governments in all future treatment of any questions relating to the North American fisheries, that Her Britannic Majesty's Government should be distinctly advised that the Government of the United States cannot accept the result of the Halifax commission as furnishing any just measure of the value of a participation by our citizens in the inshore fisheries of the British provinces; and it protests against the actual payment now made being considered by Her Majesty's Government as in any sense an acquiescence in such measure or as warranting any inference to that effect.

Mr. Evarts to Mr. Welsh.

[Telegram.]

WASHINGTON, November 9, 1878.

WELSH.

Minister—London.

Telegraph me immediately full text of both notes omitting formal parts and recitals from my despatches. Cipher unnecessary.

EVARTS.

Mr. Evarts to Mr. Welsh.

No. 179.]

DEPARTMENT OF STATE,
Washington, November 12, 1878.

SIR: Your cable dispatches of the 10th instant, containing the full text of Lord Salisbury's two notes of the 7th instant, in reference

respectively to the matter of the award of the Halifax Commission, and to the question of the rights of American fishermen in British North American waters under the treaty of Washington, were duly received, and both subjects now under consideration. The final determination of the government in regard to the payment of the award will be promptly communicated to you by telegraph—quite probably before this dispatch reaches you.

I am, &c.

WM. M. EVARTS.

Mr. Evarts to Mr. Welsh.

[Telegram.]

WASHINGTON, November 16, 1878.

WELSH.

Minister—London.

Call upon bankers confidentially and arrange for payment by you of the amount of award for which fund is in their hands. Enjoin them against any disclosure public or private. Your order on Bankers will be sufficient authority to them. I send by separate telegram instructions to you as to the manner of payment. Answer cipher.

EVARTS.

Mr. Evarts to Mr. Welsh.

[Telegram.]

WASHINGTON, November 21, 1878.

WELSH—

Minister—London.

Telegraph me whether payment made with notice as instructed.

EVARTS.

Mr. Welsh to Mr. Evarts.

No. 171.]

LEGATION OF THE UNITED STATES,
London, November 22, 1878.
(Received December 4.)

SIR: Referring to my dispatch No. 169, of the 19th instant, I have the honor to acquaint you that, agreeably to the appointment I had made with Lord Salisbury, as indicated in that dispatch, I had an interview with his lordship yesterday, at one o'clock in the afternoon, at the foreign office. I handed to him my check on Messrs. Morton, Rose & Co. for five million five hundred thousand dollars in gold coin, in payment of the amount awarded by the Halifax Commission, and at the same time I delivered to him a notice signed by me, the form of which was inclosed in your instruction No. 163. I found that form to be identical with the copy you had sent me in cipher,

the translation of which I forwarded to you in my No. 169. I now transmit a "press" copy of the notice itself which was delivered to his lordship.

Upon receiving the check and the notice, Lord Salisbury handed to me a note acknowledging the receipt of both, a copy of which I herewith inclose.

Immediately after this transaction I prepared and sent to you a full account of it by cable.

Several hours afterwards I received a telegram conveying to me your wishes in that respect, which I had thus already anticipated.

I inclose a slip from the Daily News in relation to this payment, which, I am happy to say, is fairer in its tone than many of the extracts I have had occasion to forward.

I have, &c.,

JOHN WELSH.

PERIOD OF 1905 TO 1909.

Mr. Adee to Mr. Durand.

No. 288.]

DEPARTMENT OF STATE,
Washington, D. C., July 25, 1905.

SIR: I have the honor to acquaint you with the action taken, under the President's direction, by the Department of Commerce and Labor in despatching the Fisheries Schooner Grampus, a vessel under the Bureau of Fisheries, to the coast of Newfoundland for the purpose of making observations on the movements of schools of mackerel in those waters and conducting other operations of a scientific and practical character in connection with the work of that Bureau.

The conduct of these investigations and the general control of the vessel will be under the direction of Mr. A. B. Alexander, Chief of the Division of Fisheries, whose expert knowledge renders him especially fitted to carry out the President's instructions in the matter.

It is also expected that Mr. Alexander will keep in touch with the American fishermen frequenting that coast, reporting upon their operations, assisting them with advice and counsel and using his good offices in their behalf upon occasion.

I have to request that you will be pleased to take such steps as may be appropriate towards enlisting the courteous attention and kindly offices of the authorities in that quarter to the end of facilitating the accomplishment of Mr. Alexander's mission and extending all proper consideration to the vessel and her officers.

I have the honor to be, with assurances of high regard,

Your Excellency's most obedient servant

ALVEY A. ADEE.
Acting Secretary.

His Excellency The Rt. Honble. Sir H. M. DURAND, G. C. M. G.,
K. C. S. I., K. C. I. E., etc., etc., etc.

Lenox, Massachusetts.

Mr. Adee to Mr. Reid.

DEPARTMENT OF STATE,
Washington, September 5, 1908.

No. 784.

SIR: Pending the arrangement of the fisheries question, the unarmed revenue cutter Gresham will convey Mr. A. B. Alexander, Chief of the Division of Fisheries of the Department of Commerce and Labor, to the fishing grounds of Newfoundland, in order that he may be on the spot to advise American fishermen and report conditions, as in former years.

In advising the British Chargé d'Affaires ad interim of this, I have asked him in apprising the proper authorities of the designation of Mr. Alexander for the above mentioned purpose, to take such further action as he may deem appropriate to obtain the extension of the accustomed courtesies to Mr. Alexander and to the Gresham.

I am, Sir, Your obedient Servant,

ALVEY A. ADEE
Acting Secretary.

Mr. Adeë to Mr. Howard.

WASHINGTON, September 5, 1908.

MY DEAR MR. CHARGÉ:

Pending the arrangement of the fisheries question, Mr. A. B. Alexander, Chief of the Division of Fisheries of the Department of Commerce and Labor, will proceed on the revenue cutter Gresham to the fishing grounds of Newfoundland, in order that he may be on the spot to advise American fishermen and report conditions, as in previous years.

I should be greatly obliged if, in communicating this information to the appropriate authorities, you would be so good as to take such further action as you may deem proper to obtain the extension of the accustomed courtesies to Mr. Alexander and to the Gresham.

Mr. Alexander will go on board the Gresham on October 1st at Bay of Islands.

I am, my dear Mr. Howard, very truly yours,

ALVEY A. ADEE.

MR. ESMÉ HOWARD, C. V. O., C. M. G.,
Chargé d'Affaires ad interim, of Great Britain.

Mr. Bryce to Mr. Bacon.

No. 203.

BRITISH EMBASSY

Manchester, Mass., September 29, 1908.

SIR, In reply to your note of the 5th instant, I have the honour to inform you that His Majesty's Government has been notified by the Government of Newfoundland that the usual customs courtesies and facilities will be extended to Mr. Alexander on his arrival at the fisheries.

I have the honour to be, with high consideration, sir,

Your most obedient, humble servant

JAMES BRYCE.

The Honourable ROBERT BACON,
Acting Secretary of State,
&c., &c., &c.

MISCELLANEOUS CORRESPONDENCE, DOCUMENTS, ETC.

EXTRACTS FROM MINUTES OF COLONIAL LEGISLATIVE ASSEMBLIES, MISCELLANEOUS BRITISH, COLONIAL AND OTHER CORRESPONDENCE, DOCUMENTS, REPORTS, ETC.

The Earl of Dalhousie to Earl Bathurst.

[Extract.]

QUEBEC, June 8, 1827.

"The nomination of the superintendent of the fisheries in Gaspe, obliges me to ask of your lordship some more accurate information on that subject than I have been able to obtain here, even from the officers of the navy whom I have had any opportunity of conversing with upon it, and who have been employed in cruising in the Gulf of Saint Lawrence for the protection of our fisheries.

"Your lordship knows that repeated complaints have been made by those occupied in the fisheries along the shores of Gaspe, and Bay Chaleurs, that they have been for the last ten years wholly overpowered by the American fishing-vessels which resort there annually; an average of 1,500 sail pass at Canso into the Gulf of Saint Lawrence, spreading early in the season along the Labrador shore, high up in the salmon fisheries, near the rivers of the Mingan and Seven Islands, then to the Magdalen Islands and Cape Breton shore, and latterly coming down upon the Gaspe shore, Orphan Bank, and north shore of Prince Edward Island, completely driving the British fishermen out of their way."

Extracts from the Journal of the Legislative Assembly of Newfoundland, 1850.

APRIL 24, 1850.

* * * * *

On motion of Mr. Shea, pursuant to notice, seconded by Mr. Hoyles,

Resolved, That the following Address be presented to Her Most Gracious Majesty:

To the QUEEN'S MOST EXCELLENT MAJESTY:

May it Please Your Majesty, We, Your Majesty's loyal subjects, the House of Assembly of Newfoundland, beg leave most humbly to approach Your Majesty with feelings of the most profound respect for Your Majesty's person and Government.

The subject of the Fisheries of this Colony has frequently been brought under the notice of Your Majesty, and measures prayed for

to protect these our staple interests against that depression which must appear inevitable under the operation of Foreign competition and interference to which the Fisheries of this Colony have been exposed. We have sought these measures of relief, but hitherto, we regret to add, with but little effect. We humbly conceive that we were justified in hoping for more satisfactory results from the prayers we addressed to Your Majesty on this important question, for the reasons which we again respectfully submit.

The causes which operate so detrimentally on our Trade and Fisheries were created by Treaties entered into by the Imperial Government with Foreign Powers with a regard solely to the exigencies of Imperial interests. The treaty of Utrecht and subsequent Treaties gave Foreigners the right of fishing on the Banks and the principal part of the shores of this island, and the additional right which gives pernicious efficiency to the former,—that of landing and curing on a large portion of our Coast. The French have stimulated the fisheries thus acquired by enormous bounties, and have prosecuted them with such vigour that in the absence of protection to British interests they have practically converted their concurrent right of fishing on that portion of our coast extending from Cape Ray to Cape John to one of exclusive enjoyment. The concessions to the Americans by the Treaty of 1818, give them advantages of which they also, sustained by their bounties, fully avail. Were the evil confined simply to the rights of fishing granted to these Powers, the British people of this Colony would feel but little cause of complaint; for fair competition on equal terms would create no apprehension on their minds as to the result. But these Powers have eagerly availed themselves of the rights thus unwisely conferred, to train men for their respective navies, and have consequently encouraged their fisheries by enormous bounties. Our self-supporting Fisheries are compelled to compete with this bounty-sustained competition of our rivals in Foreign markets, where they may sell without loss at a price which would only yield to the British fisherman one-half the cost of production. The ultimate consequences of these evils, of which the growing increase of the Foreign fisheries makes us every day more sensible, must be apparent; and when they are so clearly traceable to arrangements dictated solely by a regard to Imperial concerns, the Assembly have thought that their claims for redress could not have been justly treated with neglect and unconcern.

But even at the risk of being thought importunate, the Assembly feel that they should be wanting in their duty, did they fail again to urge on the attention of Your Majesty the perils to which our vital interests continue to be unceasingly exposed from the causes above stated.

We also desire to bring under the notice of Your Majesty the change made in the duties in Spain on fish imported into that country. This change, while increasing the former heavy tax on our staple, also effects an increase in the previous difference of charge on fish imported in British ships, as compared with that payable on the article when brought in by the ships of Spain. Spanish vessels entering the ports of this colony enjoy all the immunities that are incident to British ships, and bring their produce into our markets on equal terms with ourselves; while in return we are met by a Tariff,

the old hostility of which has been further aggravated to a degree which must end in depriving us of the markets which that country has long afforded us.

We therefore humbly pray that means may be adopted to cause the Treaties in question to be carried out in their integrity, by the establishment of a suitable protective force; and that in any future Treaties with Spain and Portugal, efforts may be made to procure a reduction of the duties on fish in those countries.

Ordered, To be engrossed.

Extracts from the Journal of the Legislative Assembly of Nova Scotia, 1852.

APPENDIX No. 25.

Report of Mr. Paul Crowell upon the fisheries in the British Colonies.

[February 10, 1852.]

To the Honorable JAMES B. UNIACKE.

DEAR SIR: Agreeably to your request, I submit for your consideration, my remarks respecting the fisheries in the British colonies.

From the first of July to the latter part of August the American fishermen seldom resort to the harbors on the south side of Nova Scotia for shelter, as they generally take their bait on the banks, which extend from George's Shoal to Sable Island Bank, Banke Quereau, Green Bank, &c. To these banks the American vessels resort early in the season, often taking two fares of codfish by the latter part of July.

These break the schools of fish that are making their way toward the shore soundings, which I think is the cause of the failure of the shore fisheries. From 1812 to 1818 fish were found more abundant about the shores of Nova Scotia than they have been since. A large portion of these vessels, after making one or two voyages of codfish, proceed to the Bay de Chaleur, from the east point of Prince Edward's Island to Shippegan Cape, Gaspe, the entrance of the St. Lawrence, as far as Point Demont's, and the Seven Islands, including Orphan Bank, Bradelle Bank, the coast about the Magdalen Islands, and the north side of Cape Breton. These comprise the chief fishing grounds for American vessels. The harbors to which they chiefly resort are the Strait of Canso, Port Hood, Sea Wolf Island, St. Peters, New London, Richmond, Cascumpeque, Shippegan, Miscow, Gaspe, Seven Islands, Magdalen Islands, &c., &c. The mackerel in the spring generally strike the south part of Nova Scotia; from the 18th to the 25th of May they come from the southward, falling in with the Nantucket and St. George's Shoal; a large quantity come through the South Channel, and when abreast of Cape Cod shape their course towards the south coast of Nova Scotia. Being bound to Boston this spring, about the 18th of May, I met large schools of mackerel, about 50 or 60, to the westward of the South Seal Island; they appeared to be coming about from Cape Cod until nearly over to the Cape. Their course may occasionally

vary in consequence of strong southerly and northerly winds; they generally fall in on the coast to the westward a few days before they do at Canso and Cape Breton. The chief places for netting and seining mackarel in the spring, are the Tusket Islands, the west side of Cape Sable, east side of Margaret's Bay, Little Harbor, White Head, St. Peters in Cape Breton, Antigonishe, and several other places. As there is no doubt but that the mackarel are bound to Chaleur Bay for the purpose of spawning, it would lead us to believe that when one fish is taken with the net or seine, thousands are destroyed which would otherwise likely come to maturity. Could the practice of taking fish with their spawn be abolished, it is likely they would be much more abundant. The mackarel, after passing the south coast of Nova Scotia, proceed to the northward, through the Straits of Canso, and to the eastward of Cape Breton, making their way northwardly until they are up to Shippegan, Bradelle Bank, Gaspe, Seven Islands, &c. After having spawned, they continue about those places as their feeding ground, there being large quantities of lants there which they feed upon, and consequently become fat.

As the season advances, about the month of October, the fish begin to make their way to the southward, and continue until the latter part of November. The practice of taking mackarel with the hook and line has not been long in operation in Nova Scotia; and I believe there never has been a voyage made with the hook and line on the southern coast of Nova Scotia, except at Sable Island, where there have been some good voyages made. The fish which resort here are of a different quality from those which go to the Bay de Chaleur, being much larger and fatter. In 1850 the fish were plenty and took the hook well, but in 1851 the fish appeared at times to be abundant, but would not take the hook. Mackarel here feed in shallow water, within the bars or shoal edges of sand which extend in different places near the Island. The vessels when employed in the mackarel fishery here lie at anchor in about 6 or 7 fathoms water, and I have been informed that mackarel have been discovered from the mast head of these vessels lying within the ridges of sand. They are chiefly taken in boats or flats, which go over the ridges when they sometimes appear to be lying on the bottom. Was there a light house erected on the north west end of the Island, I think it would be of great service to those who tend the mackarel fishery here, as they often have to cross the north west bar when they cannot ascertain the distance from the Island. As the season advances, the weather changeable, and the bars being dangerous to cross in rough weather, our vessels mostly leave after the last of September.—The American vessels which fit out for the hook fisheries are of a superior class from those in Nova Scotia. Their tonnage generally from 60 to 130 tons, very sharp built, well fitted in every respect; those they term the sharp-shooters are very superior sailing vessels. This enables them to reach the fishing ground and procure their cargo, while those of Nova Scotia are actually carrying sail to reach the fishing ground. Those vessels are likewise well manned, varying from 12 to 24 men, making an average probably of about 15 or 16 men to each vessel. In 1851 I was informed there were about one thousand sail of American vessels, which with an average of 15 men would give fifteen thousand. Some of these vessels, I heard, made three trips in Chaleur

Bay for mackarel. Some, after having made one or two trips or fares of codfish, proceed to the Bay de Chaleur, well fitted, taking sufficient barrels to cure their fish in. These are partly filled with menhaden and clams, which are considered the best bait for mackarel; others are filled with salt and water, which make ballast; when required for use they are emptied of their contents and filled with mackarel; this keeps their vessels in good ballast. They generally commence their fishing about Bradelle Bank, Shippegan, and follow the fish, northerly, until the season advances, when they return to the north side of Prince Edward Island and Cape Breton; the crew of these vessels are nearly one-fourth belonging to Nova Scotia.—Some of these leave their homes in the spring of the year and take passage for the United States for employment; others ship on board American vessels when they arrive in Nova Scotia. This may be a cause why American fishermen are found fishing within the limits.

The Straits of Canso being the chief passage that American vessels take, when bound to or from the Bay de Chaleur, they generally stop here, as they say, for the purpose of shelter, repairing damages and procuring wood and water. Many of the places through this strait are so situated, that vessels may haul into the bank and discharge without being detected. As these vessels, bound on a fishing voyage, are nearly full of barrels, it would be nearly impossible to detect them if actually engaged in illicit trade. Some of the coves where they resort have fine streams of fresh water, with rum shops near by, which give them an opportunity of taking on shore a barrel of the American manufactured brandy, and bringing in return the pure fresh water; and as many of the crew of these vessels were actually residents of these places, they think they have the same privileges as those who sail in British vessels; and as they have been habituated to go on shore and purchase small stores, such as butter, potatoes, sheep, and such articles from the inhabitants, I found the inhabitants of the coast more favourable to the American than they were towards the Nova Scotia men. At some places I heard that the inhabitants would go out in their boats when the Americans were taking mackarel, and make fast to them and fish while they had them baited up. All this gives the inhabitants a favorable opinion of the Americans.

As to the mode to be pursued to prevent American fishermen from illicit trade, and going within the limits to fish, it is not easy to determine.

However, as Nova Scotia has so many harbors and places for vessels to resort to, and the Strait of Canso open for all vessels, it would be many of opinion, that protective duties would raise Nova Scotia. The chief of those who remove to the United States, who go from Nova Scotia to sail in American vessels, are young men who would never leave Nova Scotia could they get employment at home. There are many of opinion, that protective duties would raise Nova Scotia to a level with other countries, but I believe this would never keep these young men in the province.

The fact is, Nova Scotia wants a market for its produce, and its greatest production is fish. Let us see how a protective duty would work: the fishermen of Nova Scotia calls on a merchant for supplies: if he has a little property it is likely the answer will be,—you can have such and such articles, but as there is a high tariff this year, for the purpose of raising you to a level with other countries, you

must pay an extra price for every barrel of flour, and in the same proportion for every other article you may want or require. When his bill is made out, it has a large appearance; but when he considers we have protective duties which will enable him to pay his bills, he puts it in his pocket and commences his fishing voyage.

After making his voyage, hearing that fish are worth a fair price in the United States, he collects his fish on board his craft, and generally take them to the port whence he was supplied in the spring.

On making enquiry of the price of fish, he finds them very low; on asking the cause, he is told why the duties are so high, it takes about one-fourth, including freight, insurance, &c., to have them disposed of in the United States. With this reduction, the fisherman often taking his whole voyage to the merchant who supplied him, finds it will not amount to a sufficient sum to pay his bills.

What now is to be done? He calls upon his merchant and asks if the protective duty will not be of service to him; the answer is,—Oh! no, that is to protect the mechanic, those who have factories, the farmers, &c. He has a little property, and that must go to pay the balance of his bills, and perhaps not sufficient left to supply his family through the coming winter. But how will those do who sail in American vessels? When arriving in the United States they generally procure good wages, or should they ship on shares, their fish is taken to a market in the United States, free of duty or expense. As these vessels are generally bound to some port in Nova Scotia, those who are Nova Scotia men can take their little supplies for their families, and have them landed at their doors, nearly as low as they can be procured in the United States. When their voyages are accomplished, they either proceed on to the United States and receive their share, or, as the practise is in some places, a merchant supplies them with goods to the amount of their voyage. He then receives a draft, which is accepted by the owner of the vessel, payable in the United States. This answers the purpose of the fisherman, and likewise makes remittance for the merchants, who can step on board the packet and proceed to the United States, collect his drafts, make arrangements for a new supply for the coming season, and return. This appears to be the state of a large part of Nova Scotia at present. There has been a difference of opinion respecting reciprocal trade between the United States and the British Colonies. As regards the cod fisheries, it is my opinion, that American fishermen affect our shore fisheries more by being kept on the outer banks, when if they were admitted freely into our ports, our fishermen would be enabled to procure larger fares; I have no doubt that the convention between the Americans and British has been the cause of the American fishermen procuring theirs much sooner than they would have done had they been admitted freely into our ports. As regards the mackerel fishery, it is a question not so easily decided. There is but little doubt the Americans would enjoy some of the privileges which now belong to British subjects; but could we receive something equivalent for those privileges, by having the same privilege in the American market our fish produce going there free of duty, our coasters having the same privilege in American ports as they had in ours, this might have a tendency to bring Nova Scotia on a level with other countries, and prevent our young men from leaving the province. The means to be employed for the prevention of those who might trespass on the fish-

ing ground, or are engaged in illicit trade, is a question of great importance at present. As to smuggling, perhaps that trade will never be entirely abolished; but much might be done if the officers and magistrates on shore would take sufficient interest to put down this trade. Persons commissioned on board of vessels have not the opportunity of detecting these things as those on shore, as vessels so commissioned are generally watched.

The course to be pursued to prevent foreign vessels from trespassing on the grounds reserved for British subjects, requires more talent and experience than I have, to decide. However, with the information which I have received, and the little experience I have, it appears that it would take a larger amount than the legislature of Nova Scotia would grant for the protection of the fisheries, when we take into consideration the extent of the coast on Nova Scotia and Cape Breton, which, in the latter part of the season, is completely lined with American vessels, from Cape Gaspe to Cape North, in Cape Breton. These vessels I have been informed, often fish within half a mile from shore, paying little or no regard to the limits stated in the national convention. In fact the day on which I seized the "*Tiber*," there were sixty or seventy sail in sight, which were nearly all within limits; but as these are fast sailing vessels, if they once get the start, and are out of gunshot, they feel quite secure. Were the British Colonies united, or was each colony equally interested in the fisheries, and would all come forward to protect the fisheries, it would be of great consequence. The coast cannot be protected from encroachment by foreigners, by sailing vessels, unless there are three or four in number.

A small steam vessel would likely be of great service to prevent foreigners from encroaching, but as the fishermen are generally fitted with good glasses, it is not likely a steam vessel would take them in the act of fishing within the limits.

In the convention between the two nations, the words "curing fish" and "preparing the fish," it appears to me to require some further explanation; on the former the American fishermen believe the object was to prevent them curing or drying codfish on shore, as the hook mackerel fishing was not practised when that convention was made. I have seen instances where American vessels had been fishing the whole of the day, towards evening a gale springing up, they were forced to run for a harbor with fifty or sixty barrels of fresh mackerel on deck, and if salting those fish is understood curing fish, which I think is the only way mackerel can be cured, under those circumstances these people must cast their fish into the sea again, or run the risk of having the vessel and cargo seized. The words "preparing the fish," may be construed to what it was not intended.

When cruising in the schooner *Telegraph* last fall, being in little Canso, an American vessel lay near; I discovered the men busily employed on deck, I manned my boat and boarded her; I found them employed grinding bait for mackerel; the captain appeared quite innocent, and said he had been so careful he had not taken a lobster while in the harbor. This might be understood preparing to fish.

That part of the convention which provides that American fishermen shall be admitted to enter the bays and harbors in the British colonies, for the purpose of shelter and repairing damages therein,

of obtaining wood and water, and for no other purposes whatever,—if strictly carried out would not allow them, in my opinion, to do any more than is specified in the convention. I made some enquiry respecting the words “preparing to fish,” from those who I thought might understand the subject, who gave their opinion, that laying the vessel to or putting her in a proper position to fish, was the proper meaning. Another question in my opinion requires some consideration—that is, that part of the law which requires that vessels after having been seized shall be left in charge of the officer of her majesty’s customs in the first port which they may enter.

In case the vessel and cargo should be sold, they would not be worth near as much in some ports as they would in others. As regards Port Hood, there is not any safe place for a vessel to lie unless she has a crew constantly on board. The sixth question, referred to the law officers in England,—whether American vessels have a right to enter the harbors of this province for the purpose of obtaining wood and water, having provided, neither of these articles at the commencement of the voyage in their own country, appears to be unrestricted by any condition expressed or implied. I believe it has been the practice of American vessels when bound to the Labrador to stop at some port in Nova Scotia to procure firewood, small spars, such as boat’s masts, sprits, oar rafters, gaff handles, and such like things.

It is my opinion that persons commissioned for the protection of the fisheries, should have very explicit instructions: what would be a sufficient time for procuring wood, water, &c., and likewise how far the word “shelter” should extend. I have examined the report of the committee on the fisheries for 1851, and do not see any further explanation than the law officers in England have given. Their decision respecting the prescribed limits appears to be plain; but respecting the entering our harbours, in my opinion, requires some additional explanation.

I have, &c.

PAUL CROWELL.

February 10, 1852.

Extracts from the Journal of the Legislative Assembly of Nova Scotia, 1853.

Colonel Bazalgette to Admiral Seymour.

GOVERNMENT HOUSE,
Halifax, July 2, 1852.

SIR—I have had the honor to receive, and beg to thank your excellency for, your letter of yesterday’s date.

I herewith enclose, for your excellency’s information, as also to meet the object expressed in your letter, a copy of the amended instructions given to the commanders of the provincial cruizers, which you will find to embody all the suggestions you were kind enough to offer at the interview to which you refer.

I am not without the hope, as the season approaches when the mackarel fishers from the United States congregate in the Gulf of

St. Lawrence, that it may be in my power so to strengthen the crews of the provincial vessels, as to render any unlawful attempt of trespass to resist their authority abortive.

I have, &c.

(Signed)

JOHN BAZALGETTE,
Administrator.

His excellency SIR GEORGE F. SEYMOUR,
Vice admiral, &c, &c, &c.

[Inclosure.]

Instructions for the commanders of the vessels employed by the government of Nova Scotia for the protection of the fisheries.

1. To keep a correct log, and particularly as to every circumstance connected with the fishery, noting with as much accuracy as convenient, all foreign fishing vessels, tonnage, cargo, crew, and voyage.

2. When you find foreign vessels fishing, contrary to treaty, within three miles of the coast of Nova Scotia, you are to take means to secure and send them in for trial, with the necessary witnesses, when the infraction admits of clear proof.

3. The rights of fishery ceded to the United States, and retained by British subjects, depend on the convention of 1818, and the acts of this province, passed in 1836, and the 59th Geo. 3rd, with copies of which you are furnished.

4. By the said convention the United States renounced forever any liberty previously enjoyed, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbors of her majesty's dominions in America, and such vessels are liable to seizure for curing fish within the limit aforesaid. Due caution must be observed not to interfere with vessels fishing at other places than the coast of Nova-Scotia, as the convention differs when treating with regard to the Labrador coast, Newfoundland, Bay of Fundy and Magdalen Islands.

5. If a vessel be found violating the treaty, and effect her escape, she is still liable to detention for trial during the same voyage.

6. All seizures must be placed in custody of the nearest convenient custom or excise collector, and information, with a statement of the facts, and the deposition of the master and three of the crew, be sent to the attorney general, through the provincial secretary.

7. When a vessel is found clearly infringing the treaty, compulsory means must be used, if necessary, to detain her for trial; but resort to force can only be justified after every other prudent effort has failed.

8. On capture, it will be prudent to take part of the foreign crew on board the cutter under your command, and place some of your own crew on board the foreign vessel, as a measure of precaution.

9. When any of her majesty's ships are met with in port, you should, when circumstances permit, go on board and confer with the naval commander, and receive any suggestions he may feel disposed to give, which do not conflict with your general instructions.

10. You will report your proceedings briefly in a letter to the provincial secretary whenever you enter a port where there is a post office, always noting where instructions will reach you by return of mail.

(Signed) H. BELL.
Chairman board of works.

OFFICE OF BOARD OF WORKS, 26th June, 1852.

Colonel Bazalgette to Sir John Pakington.

No. 27.]

GOVERNMENT HOUSE,
Halifax, July 8, 1852.

SIR: On the 24th June I had the honor to report the steps taken by the provincial government for the protection of the fisheries.

I have now the honor to enclose a copy of the amended instructions, which, at the suggestions of vice admiral Sir George Seymour, have been issued to the captains of the cutters; those, a copy of which was forwarded in my despatch No. 25, having been cancelled.

I also beg to enclose a copy of a despatch, which the vice admiral did me the honor to address to me on the 1st of July with a copy of my reply, and also a copy of a despatch addressed by me on the 7th of July to his excellency the governor general.

I trust that her majesty's government will perceive that in availing myself of the extensive knowledge and experience of Sir George Seymour, a sound discretion has been exercised; and that while the intentions of the legislature have been zealously carried out, due care has been taken to avoid any thing which might hazard the continuance of the friendly policy and mutual good understanding which at present exists between her majesty's government and that of the United States.

I have, &c.

(Signed) JOHN BAZALGETTE,
Administrator.

The right honorable SIR J. PAKINGTON, Bart.,
&c., &c., &c

Extracts from the Journal of the Legislative Assembly of Prince Edward Island, 1853.

APPENDIX F.

Lt. Governor Bannerman to Lord Grey.

No. 50.]

GOVERNMENT HOUSE,
Prince Edward Island, November 15, 1851.

10. The enclosed letter from the United States Consul at Pictou, I send for your Lordship's perusal. That Gentleman does not seem to be aware of the construction which is now put by the British Government on the Convention of 1818, viz., that the three miles distance from the shore is to be computed from the Head Lands, and

not the Bays; and if his unfortunate countrymen had been three miles seaward of the two extreme points of the coast to which he refers, they could have easily rounded the Island and run to the lee side of it in safety. The Crews that were saved—upwards of 300—have been sent home at the expense of the United States Government; and your Lordship will see by the annexed extract from a Massachusetts paper, that they were sensible of the hospitality that they met with from the Islanders.

* * * * *

Lt. Governor Bannerman to Lord Grey.

GOVERNMENT HOUSE,
P. E. Island, February 12, 1852.

(Despatch No. 10.)

MY LORD: 1. In reference to the accompanying Despatch, No. 9, I beg leave to direct your Lordship's attention to a Colonial Act, 6 Vic. cap. 14, page 698 of the volume of Statutes which I recently forwarded to your Lordship. The Act to which I refer is one which received the Royal Assent on the 3rd September, 1844, and an order was on the same day made by Her Majesty in Council, declaring "that its clauses and provisions should be the rules, regulations and restrictions respecting the Fisheries on the Coasts, Bays, Creeks or Harbours of the Island of Prince Edward."

2. By the provisions of this Act, Officers of Customs and Excise, Sheriffs, Magistrates, and *any* person holding a Commission from the Lieutenant Governor, are authorized to board, search, &c., vessels within three marine miles of the coast, "and if found fishing, preparing to fish, or to have been fishing" within that distance, such vessels, with their cargoes, to be seized and forfeited, &c., &c.

3. The provisions of this Act have never yet been enforced; but should the Fishery question remain much longer unsettled, in all probability attempts will be made to seize American Fishing vessels, and such attempts may be resisted, which may lead to collisions, the consequences of which are not easily to be foreseen.

4. To guard against any such occurrence, I think it would be very desirable for Her Majesty's Government to order steamers to be stationed here from the 10th June to the 1st October, the Commanders of which, in addition to their instructions from the Admiralty, would be fortified with a Commission from the Lieutenant Governor of this Island, enabling them, in terms of the Act and Order in Council, to legally enforce their provisions *within the limits prescribed by the Act*; for I consider that the powers which the Statute vests in Custom House Officers, &c., &c., (in so far as the Fisheries are concerned) to be very dangerous ones, and such as ought only to be entrusted to those who have the *means*, as well as the authority to enforce them.

5. I understand there is nothing more likely to urge the American Government to an amicable settlement of this long vexed question, than an enforcement of the Treaty around this Island, where their fishermen catch most of the mackerel sent to the United States.

6. Notifications of the Royal Assent to the Act alluded to, and Order in Council, were published in the Royal Gazette of this Island on the 8th October, 1844; but I am ignorant whether the United States Government are aware of its provisions, and it will be for your Lordship to determine if any intimation should be made to that Government on this important subject.

I trust from what I have already stated, that Her Majesty's Government will perceive the peculiar position in which the Colony is placed, in regard to the Fisheries, so very different from the adjoining Provinces. I apprehend that the Lieutenant Governor, irrespective of any other interest, is entitled to carry that law into effect, applicable to this Island, which received the sanction of the Sovereign; and that the Legislature may modify, relax or abrogate such law, on conditions, subject to the approval of Her Majesty's Government. The importance of the subject will, I trust, be my excuse for troubling your Lordship at such length, while,

I have the honor to remain,

Your Lordship's obdt. Servt.,

A. BANNERMAN.

Rt. Hon. the EARL GREY.

Extracts from the Journal of the Legislative Assembly of Newfoundland, 1857.

Message from His Excellency the Governor, transmitting to the House of Assembly, copy of a Despatch from the Secretary of State for the Colonies, of the 16th January, 1857, enclosing transcript of a Convention between Her Majesty and the Emperor of the French; and other Documents relative to the Fisheries on the Coast of Newfoundland and Labrador.

C. H. DARLING, Governor:

The Governor transmits to the Hon. the House of Assembly the copy of a Despatch from the Right Hon. the Secretary of State for the Colonies, enclosing the copy of a "Convention between Her Majesty and the Emperor of the French, relative to Rights of Fishery on the Coast of Newfoundland, and the neighboring Coasts," signed at London, on the 14th January last, together with a copy of the Correspondence referred to in that Despatch.

The Assembly will perceive that by the 20th Article of the Convention it is provided, that that Instrument shall come into operation as soon as the Laws required to carry it into effect shall have been passed by the Imperial Parliament of Great Britain, and by the Legislature of Newfoundland,—and that Her Majesty has engaged to use her best endeavours to procure the passing of such Laws, in sufficient time to enable Her to bring the Convention into operation on or before the 1st January, 1858.

The Assembly will learn from the Secretary of State's Despatch, that in making this engagement, Her Majesty's Government desire to express their strong anxiety to effect the arrangement for which the Convention provides, and their conviction that to miss the present opportunity of bringing to a settlement the long agitated questions to

which it relates, will be to cause great inconvenience, and probable future loss to Newfoundland.

The Despatch referred to, with the previous communications from Secretaries of State, will fully inform the Hon. the House of Assembly, of the reasons, both general and particular, which have influenced Her Majesty's Government in the decision at which they have arrived; while from the copies of Despatches from the Governor's immediate predecessor, and from the Governor himself communicating his own opinions, and those of his constitutional advisers, it will be perceived that the objections urged by the local authorities of Newfoundland to the additional privileges sought for by France, have been clearly stated, and unreservedly expressed.

The negotiations appear to have resulted in a modification both of the demands and concessions originally proposed upon the part of France.

In laying before the Council, on behalf of Her Majesty's Government, the views contained in the Despatches of the Secretary of State, before the completion of those formalities which are usually observed at the commencement of the Legislative Session, the Governor has had regard to the great interest and importance of the subject: And he desires to express his confidence, that in deliberating upon those views, the Legislature, while anxiously regarding, as in duty bounden, the interests of Newfoundland, will not fail to recognize the weight of those great International considerations which are so anxiously and impressively urged throughout the communications from Her Majesty's Government.

(6th February, 1857.)

C. H. D.

Enclosures follow.

[Inclosure No. 1.]

Memorandum of Governor Harvey for Mr. William Thomas.

[Confidential memorandum for the Agent to be appointed on the part of British Interests to confer with Captain Le Fabvre on the subject of the fisheries on the coast of Newfoundland.]

GOVERNMENT HOUSE,
St. John's, (Newfoundland), July 10, 1844.

1. The object for which you have been selected to meet and confer with Captain Le Fabvre as the agent of the French Government is to consider the actual state of the existing intercourse and relations between British subjects and French fishermen on the coast of Newfoundland generally, but more especially in relation to the supply of bait by the former to the latter, and to endeavor to come to some arrangement on the various points which have from time to time disturbed the good understanding which it must consist with the interests as well as the desire of both nations to cultivate and to maintain, and which it is evident can only be done by a due regard to those interests respectively, and not by any reckless sacrifice on either part; in a word, by a fair and equitable exchange of those advantages which each party may have in its power to concede to the other.

2. To aid rather than to guide you in arriving at such a result of your discussions as may be beneficial to the great interests involved, and satisfactory to Her Majesty's Government, is the sole object of the following observations, to which it only remains for me to add,

that you are strictly prohibited from holding any communication with any other French subject except Captain Le Fabvre, who has agreed that, as the discussions are to be conducted in the French language, you should have the benefit of the services of Captain Elliott (Her Majesty's ship *Eurydice*) which he has kindly consented to afford as interpreter.

3. In addition to the information which will be found in the documents and correspondence which accompany this memorandum, and of which a schedule is annexed, I would impress upon you to bear in your constant recollection, that while it may be desirable that the existing provisions of law and treaties by which the supply of bait by British subjects to the fishermen of France is at present regulated, should be reconsidered with a view to their revision, and perhaps relaxation, yet that the protection of the rights and interests of our own fishermen, and of all connected with them, must be regarded by you as the primary object to be kept steadily in view. The real question to be considered may therefore be stated as being "how far we are in a position to make, without injury to our own coast and harbor fisheries, such concessions, with a view to the supply of bait from the British shores of Newfoundland for the use of the French vessels engaged in the prosecution of the bank and deep-sea fisheries, (from which, by their high bounties, they are enabled to exclude, not British fishermen only, but those of all other nations, from successful competition), as may be regarded by them as an equivalent for their withdrawing from certain parts of the north-west coast of this Island within which they at present enjoy by treaty the right of taking and curing fish, say from Cape Ray to Bonne Bay or Green Point." I do not propose the extension of this concession to us further to the eastward, because I am convinced it would be resisted. I therefore proceed to state, first, the advantages which would, in my opinion, result to England from the acquisition of this portion of the coasts of this Island, from which, although possessing the acknowledged territorial sovereignty, Her Majesty's authority and that of the law is at present excluded; and secondly, what are the equivalents I would propose to offer in exchange. 1st. The climate and soil of the District to which I have referred are said to be good; it possesses fine timber, and is in other respects adapted for agricultural, lumbering, and shipbuilding pursuits; its coast fishery is also good, and it possesses several rivers, and consequently salmon fisheries, particularly at the mouth of the Cod Roy River near Cape Anguille. These are confessedly great advantages; but there is another consideration connected with the acquisition of an uncontrolled possession of this district, which with me has more weight than all those benefits which I have enumerated. It is, that we may be placed in a position to redeem from the most lamentable of all imaginable conditions a British population consisting of many thousands of the natural born subjects of the Queen, who are at present, existing without law, without religion, and setting at open defiance the restraints alike of God and man, and passing from the cradle to the grave in a state of worse than barbarism or heathenism. To rescue our fellow countrymen from so bad a state, imposed upon them by the unwise restrictions of impracticable treaties—to bring them within the pale of civilized life—to extend to them the protection and to exact from them obedience to the laws, as well as to open up the treasures of the land and of the

sea with which that neglected portion of Newfoundland is known to abound, and thereby to enlarge and increase the revenue of the colony—these are some of the most prominent of the considerations which forcibly present themselves to my mind in reference to the subject which you are appointed to discuss.

4. I have understood that the French fishermen would attach a high degree of value to the privilege of following the codfish, which at certain seasons of the year strike across from Quirpon, (the north-eastern point of Newfoundland) to the Island of Belle Isle, situated in the straits of that name, but so much nearer to the coasts of Labrador than to any part of Newfoundland as to be beyond the present French limits. Those limits I should agree to extend so as to include Belle Isle, and should regard their withdrawal from the part of the coast to which I have alluded, viz., from Cape Ray to Bonne Bay, (both inclusive,) as cheaply purchased by such a surrender on our part. Capt. Le Fabvre may not, however, regard this as a sufficient equivalent. In such a case I should consider some relaxation in the laws regulating the supply of bait from the British coasts and harbours opposite to St. Pierre's, for a limited period, and under well-considered restrictions, as more free from objection than would be the admission of the French or of any foreign power to any right of taking and drying fish on any part of the "coast of Labrador," though they are virtually, though indirectly, in the enjoyment of that advantage at the present moment.

Finally. It may be proper to remark, that, although it may be perfectly true that England has nothing to complain of as regards the provisions of the existing treaties in respect to the question of bait, and might at once declare that, as far as that question is concerned, she has only rigorously to enforce her rights; yet it is necessary to be borne in recollection that such an open and long-continued infringement has been permitted on her part of the engagement by which the King of England bound himself and his successors in the declaration annexed in the Treaty of 1783 to prevent settlement by British subjects, or to cause the removal of such as had or might attempt to settle themselves on those parts of the coast of Newfoundland within which the French possess by that treaty the right of taking and drying fish; that it might be very inexpedient and unwise for us to stand upon our extreme rights in respect to this question, as such a proceeding might only have the effect of inducing our opponents to assert those which they undoubtedly possess under the declaration above referred to, as well as of opposing *in limine* an unnecessary obstacle in the way of the amicable consideration of any proposition which Captain Le Fabvre may have to bring forward in relation to the west coast.

With these observations, it only remains for me to request that you will put yourself into immediate communication with Captain Le Fabvre, keeping me constantly informed of your proceedings, and referring to me at all times when you may be desirous of receiving my advice or further instructions, of which you are to consider as one that this memorandum, with the whole of the documents which accompany it, are to be returned to me, with your report.

J. HARVEY.

The Hon. W. THOMAS,
Member of H. M. Executive Council of Newfoundland.

[Inclosure No. 2.]

Memorandum of Mr. William Thomas.

[Conversation which took place between Mons'r Adolphe Fabvre, commanding the French corvette "La Fortune", and Mr. William Thomas, named by Sir John Harvey, Governor of Newfoundland, on the part of Her Majesty the Queen of Great Britain, on the subject of an arrangement for the common interests of the French and English fishermen on the coasts of Newfoundland and Labrador.]

WEDNESDAY, JULY 17, 1844.

No. 1. Conversation commenced by referring to the concurrent right of fishing by the English on that part of the coast of Newfoundland assigned by treaty to the French. This point was insisted on by Mr. Thomas, but denied by Captain Fabvre, and subsequently reserved for the consideration of their respective Governments.

No. 2. Captain Fabvre then proposed that a concurrent right of fishing should be admitted by the French on all the French coasts to the westward of this Island, and that a like concurrent right of fishing should be granted to the French on that part of the Labrador coast which is situate in the Straits of Belle Isle, immediately opposite to Newfoundland. This was decidedly objected to by Mr. Thomas, as offering in his opinion no advantage to great Britain, but tending to increase the difficulties, and promote collision between the fishermen of the two nations.

No. 3. In consequence of this opinion, it was proposed by Mr. Thomas to confine the respective fishermen within certain defined limits, and for this purpose he submitted to M. Fabvre as the French limits a line of coast extending from Bonne Bay to Cape St. John, on which coast only the French should have the exclusive right of fishing, the French ceding to Great Britain the exclusive right of fishing from Bonne Bay to Cape Ray.

No. 4. To this M. Fabvre rejoined that such an arrangement might be made, provided the French were allowed to retain exclusive possession of the four ports of Cod Roy, Red Island, Port-au-Port, and Lark Harbor, and further, that the English should not be restricted from the export of bait from Newfoundland to St. Pierre.

No. 5. Mr. Thomas replied that if these four ports were reserved, France would retain the best fishing ground on the whole western coast, while an active competition would be encouraged between the Fishermen of the two nations, and the danger of collision become greater than ever.

M. Fabvre then said that without these four ports he considered the French would be making too great a sacrifice. Mr. Thomas said he considered the obtaining of an exclusive right of fishing on the coast before proposed by him, and perhaps adding to that the exclusive right of fishing on the Island of Belle Isle, together with the great advantage which must accrue to the French from the English being permitted to export to St. Pierre such caplin as they may have to dispose of beyond what may be sufficient to bait our own boats, would be an ample remuneration for any surrender that France might be called on to make under such an arrangement.

Captain Fabvre replied that he did not reject the last proposition, but that he did not consider himself sufficiently authorized by his Government to accept it; and therefore the conversation was concluded by an agreement to refer what had passed to the respective Governments, each party expressing his separate opinions thereon.

WM. THOMAS.

[Inclosure No. 3.]

Report of Mr. William Thomas to Governor Harvey.

ST. JOHN'S, NEWFOUNDLAND, July 27, 1844.

May it Please Your Excellency: In laying before Your Excellency the minutes of my conference with Captain Fabvre, held in obedience to Your Excellency's commands of the 10th instant, it may be proper for me to accompany them with the following observations, which are made with reference to the several matters as they follow in the minutes from No. 1 to No. 5; but I must beg to premise, that whatever exclusive rights are alluded to, the privilege of exclusive fishery is alone intended, and not the occupation of the land.

No. 1. Is on the concurrent right of fishing on the coast of Newfoundland. On this subject I do not presume to offer an opinion.

No. 2. Reciprocal rights of concurrent fishery on the west coast of Newfoundland and the coast of Labrador in the Straits of Belle Isle.

Great Britain would by such an arrangement cede the right of fishing on the coast of Labrador, without receiving any equivalent, if she at present possess the concurrent right on the Newfoundland shores; and this right would appear to have been acknowledged by France, in permitting so great a number of British subjects to remain in quiet possession of houses and fishing rooms on the western coast ever since the treaties of 1814 and 1815, a period of nearly thirty years, without making to the British Government any application for their removal. These people will doubtless consider themselves to have acquired a sort of prescriptive right, under which their establishments have grown up, and it will therefore seem the greater hardship to be now deprived of it.

No. 3. *Exclusive Rights*.—It would therefore be more beneficial to both nations if their respective fishermen were kept separate and distinct in their fishing places. By these means all kinds of collision could be prevented, and the facilities for illicit trading would be very much lessened. British subjects would then be made amenable to the laws of their own country, and religious instruction would be imparted to those who are now in a state of moral destitution.

No. 4. The reservation of the four ports herein named would prevent the carrying out of the principle contained in No. 3.

No. 5. *Belle Isle*.—The privilege of fishing on Belle Isle may, so far as I am advised, be conceded without present inconvenience, as I am not aware that it is ever used by British subjects, or that there are on it any buildings. There should, however, be a strict limitation as to how far the French may go from that Island towards Labrador.

No. 6. *Bait*.—The main object of Captain Fabvre's negotiation appeared to me to be the obtaining an unrestricted supply of bait for the use of the French fisheries carried on from St. Pierre and Miquelon; and provided this could be secured by the free liberty to purchase from British subjects, the other matters of conference might, I conceive, be easily adjusted. The supply of bait to the French is however, as your Excellency is aware, regarded by the people of this colony with great jealousy. They are sensible that in restricting that supply they possess to a certain extent the power of setting limits to the fishery of the French, whose growing competition in foreign markets, supported as their fisheries are by large

bounties, is far more dreaded than the chance of any collision on the coast, which a protective force on the station could prevent. It is also supposed that by this supply of bait the French have been materially assisted in establishing a system of fishing on the great bank, which the English, unaided by bounties, are unable to compete with; and this belief derives strength from the fact that the Bank fishery, once so flourishing, is now reduced to the employment of only three or four British vessels. Moreover, the benefit to be derived from any exclusive rights obtained on the western coast would be regarded as a remote and uncertain compensation for an immediate disadvantage.

It cannot, however, be denied, that many of the people on the southern coast of this Island, (I allude particularly to those of Placentia and Fortune Bays) who have long enjoyed the advantage of selling bait to the French at St. Pierre, are unwilling to relinquish this privilege, and would feel great dissatisfaction at any measure that should deprive them of it; and if a law were passed for that purpose, I am confident they would violate it as often as opportunity afforded.

By the Act 3 & 4. W. 4, cap. 59, sec. 2, the produce of the fisheries is allowed to be exported in British ships; therefore I apprehend, that unless prevented by the 26 Geo. 3, cap. 26, secs. 14 and 20, the export of caplin and herring to St. Pierre, subject to the custom-house regulations, could not in such ships be deemed illegal.

Should this conference be followed by any treaty between the two nations, I may be permitted to suggest the expediency of guarding in the strongest manner against any privilege of purchasing caplin on the open sea, or anywhere but at St. Pierre. The export should be subject in all such cases, whether in vessels or boats, to the custom-house regulations, and care should be taken, not only to preserve by proper restrictions a sufficient quantity for the use of our own coast fishery before any exportation is allowed, but also to prevent collision between those British fishermen who take it for their own use and those who take it for exportation.

In conversation with Captain Fabvre, I think I understood from him that a large portion of their shore-cured fish was sent to the Mediterranean, and that no bounty was given on fish consumed in France.

I would respectfully suggest to your Excellency, whether, in affording any further advantages to the French than those they now enjoy for the supply of bait, it would be possible to make any stipulations as to the markets to which they should send their fish, or as to the abolition or modification of their bounties.

I have, etc.

(Signed) WM. THOMAS.

(Journal of the House of Assembly of Newfoundland, 1857, pp. 185, 186.)

Sir A. Perrier to the Earl of Malmesbury.

PARIS, 5th July, 1852.

MY LORD: Monsieur de Bon having this morning received authority from the Minister of Marine to communicate to me his proposal for the settlement of the conflicting rights of British and French fisher-

men on the coasts of Newfoundland, the said proposal was read at this morning's conference, a minute of the proceedings of which I have the honor to enclose.

The French Government offers to admit the right of British subjects to inhabit the Bay of St. George, or, in other terms, to give up the exclusive right of fishery in that Bay, to which they consider themselves entitled by the treaty of 1783.

In return for this concession they demand,

1st. The right to purchase and fish for Herrings and Caplin on the South Coast of Newfoundland without any hindrance or retribution.

2. The right to fish during two months of the year (without curing or drying on shore) on that part of the coast of Labrador between the "Isles Vertes" and the "Isle St. Modeste", both included.

3. The right of fishing at Belle Isle in the Straits, which they enjoyed (according to their assertion) up to 1841, without any demur on the part of Great Britain.

Having stated to M. de Bon my desire not to enter into any discussion on this proposal until I shall have communicated it to H. M. Government, he said that being charged with an urgent mission along the Coasts of France, he could not await in Paris the result of my communication and therefore that our meetings had better be suspended until his return, of which he will give me timely notice.

Monsieur de Bon's mission is to inspect all the French fisheries between Dunkerque and Bayonne. He is to leave Paris to-morrow to commence from Havre, having already visited the Fisheries between that Port and Dunkerque.

Under these circumstances I shall proceed to London at the end of this week, unless I receive instructions from your Lordship to do otherwise.

I have, etc.

(Signed)

ANTHONY PERRIER.

The EARL OF MALMESBURY, etc., etc., etc.

Sir A. Perrier to the Earl of Malmesbury.

9, CUMBERLAND TERRACE,

Regent's Park, July 26, 1852.

MY LORD: In compliance with your Lordship's verbal instructions, I placed myself in communication with the Colonial Office on the subject of the late French proposal for the settlement of the Newfoundland Fishery question, and I now have the honor to report to your Lordship that after several interviews with Mr. Strachey, the gentleman to whom I was referred, and our joint examination of the various points connected with this affair, we agreed upon the following propositions, which I beg leave to submit to your Lordship's consideration.

It is evident that in order to negotiate, with any prospect of success, for an advantageous settlement of this affair, it will be necessary to be prepared to offer to the French other advantages than those

recommended by Mr. Thomas, President of the Chamber of Commerce at St. John's, which have been refused.

The concessions to France, some or all of which might be granted without detriment to the interests of this country and of the colony, appear to be four:

1st. A right of Fishery on the Island of Belle Isle, in the Straits.

2ndly. A right of Fishery on some part of the Coast of Labrador, where it would not materially interfere with British interests.

3rdly. A further removal of the restrictions on the sale of bait; and

4thly. The reservation of certain spaces or Islands to the exclusive use of the French during the fishery season (for the purpose of drying fish,) on that Southern portion of the Coast over which they would be called upon to give up their other rights.

These concessions to be made in return for the French giving up all rights (except those reserved by the 4th concession) over that Southern portion of the District from which the British are at present by Treaty excluded. This portion to commence at least as high as Bonne Bay, and to include that Bay.

The information now in possession of Her Majesty's Government does not appear to be sufficiently complete to warrant their proposing a settlement of this question on such a basis without further inquiry into the facts.

Advantage might be taken of the short time Sir G. Le Marchant has to remain in the colony, and instructions sent to this Governor to report fully on all the points upon which further information is necessary.

This proceeding would not be productive of any unnecessary delay in the negotiations with France, as the present fishery season will be over before any decisive measures could be adopted.

Captain Milne (one of the Lords of the Admiralty) drove the French away from Belle Isle in 1841. As he is fully acquainted with the fisheries on those coasts, I thought it right to consult him on the expediency of admitting the French to fish at Belle Isle and on the coast of Labrador. His opinion is that the abandonment of French rights to the Southward of Bonne Bay, would more than compensate for any losses that would fall on the British Fishery interests in consequence of French Fishery on the Coasts of Belle Isle and Labrador.

He informed me that Vice-Admiral Sir G. Seymour, Commander-in-Chief of that Station, is about to proceed to Newfoundland. I therefore beg leave to suggest that the Lords of the Admiralty be requested to direct Sir George to confer with the Governor on this matter, and to report his own opinion upon the above mentioned concessions. Sir George has already been on the Newfoundland Station, and is fully aware of all the difficulties arising from French encroachments on that quarter.

I had prepared the enclosed memorandum to serve in my communications with the Colonial Office, and I have the honor to submit to its conclusions to Your Lordship's consideration.

I have, etc.,

(Signed) ANTHONY PERRIER.

The EARL OF MALMESBURY, etc., etc., etc.

P. S.—Since writing the foregoing, I have been informed that Sir G. Le Marchant has been authorized to leave Newfoundland and to proceed to Halifax.

[Inclosure.]

Memorandum on the Newfoundland Fishery Negotiations.

Subsequently to the Reports made by Sir A. Perrier to the Earl of Aberdeen, on the 5th of September and the 8th November, 1843, Conferences were held at Newfoundland by Mr. Thomas, President of the Chamber of Commerce, and Captain Fabvre, Commander of the French Naval Station.

The proceedings at these Conferences may be briefly recapitulated.

Captain Fabvre commenced by proposing that a concurrent right of Fishery should be admitted on the French coasts to the westward of Newfoundland, and a similar concurrent right on the Labrador coast in the Straits of Belle Isle immediately opposite.

This was decidedly objected to by Mr. Thomas, as being likely to increase difficulties and promote collisions. Mr. Thomas then proposed to allow to the French an exclusive right of Fishery on coasts of Newfoundland, extending from Bonne Bay to Cape St. John, and on the island of Belle Isle; and also, that Bait (caplin and herrings) should be sold at St. Pierre under certain restrictions at exportation from the coast of Newfoundland.

Monsieur Fabvre approved of these limits; reserving, however, to France, the exclusive possession of four points to the Northward of Bonne Bay; viz: Cod Roy, Red Island, Port a Port, and Lark Harbour.

M. Fabvre also thought that France should have a concurrent right of Fishery on that part of Labrador situated in the Straits of Belle Isle.

He concluded by stating that he did not reject Mr. Thomas's proposal; but that he did not consider himself sufficiently authorized by His Government to accept it.

This matter having been taken into consideration by the two Governments, it was agreed that a commission should be held in Paris to endeavor to come to a definite settlement of the question.

Captain Fabvre was named on the part of France, and Sir A. Perrier was appointed by Her Majesty's Government.

The commissioners met in Paris in March, 1846.

Captain Fabvre proposed a reciprocal right of Fishery on the west coast of Newfoundland, and on the coast of Labrador opposite, subject to regulations to be enforced by Government Cruisers of both nations.

Sir A. Perrier could not admit this proposal, for the same reasons which had caused it to be rejected by Mr. Thomas.

Sir A. Perrier then reproduced the proposal made by Mr. Thomas to Captain Fabvre at Newfoundland.

Captain Fabvre replied that the new instructions he had received did not admit of his entering into this arrangement, but that he would make another proposal later.

Whether from difference of opinion between the Marine and Foreign Departments, or from some other cause, Captain Fabvre could not get the Minister for Foreign Affairs to consent to this proposal being brought forward, so that in May, 1847, Lord Palmerston ordered Sir A. Perrier to return to his post at Brest.

In July, 1851, application was made by the French Ambassador in London for a renewal of the Newfoundland negotiations broken

off in 1847, and Lord Palmerston directed Sir A. Perrier to hold himself in readiness to meet the Commissioner about to be appointed by the French Government. The Commission was opened in Paris last month, and the French Commissioner, Monsieur De Bon, presented a proposal of which the following is a literal translation:

“On the part of the French Government, concession to British subjects of the right to inhabit St. George’s Bay, Newfoundland, and to fish there in common with the French citizens, or in other words, relinquishment of the exclusive right of fishery in that Bay, guaranteed to France by the Treaty of Peace of 1783.

On the part of the British Government,

1st. Concessions to French citizens of the right of purchasing and fishing for herrings and caplin on the south coast of Newfoundland, without being subject to any tax or retribution whatsoever.

2nd. Concession to French citizens of the right of fishery, without curing on shore, during two months of each year, on the following points on the Coast of Labrador, viz., Green Island, Lance a Loup, Black Bay, and Modeste Islands.

3rd. Recognition of the right of French citizens to fish at Belle Isle in the Straits, which right they exercised and without its being put in question until 1841.

This proposal is so different from anything that could have been expected from Captain Fabvre’s communications, that it cannot but be considered as totally inadmissible.

Sir A. Perrier will therefore submit to Her Majesty’s Government the expediency of his making a counter proposal embodying all the conditions contained in Lord Aberdeen’s instructions of March 14, 1846. He will also suggest that he be instructed to hold out (in the event of refusal to entertain the English proposal, or of the French Government insisting upon the removal of British settlers within the French limits) that Her Majesty’s Government will enforce the strict observance of all the stipulations of the several treaties which concede to France a temporary right of fishery upon certain parts of the coast of Newfoundland; that the French will be restricted from fishing, curing and drying, and to board Stages and Huts necessary for these purposes, that they will be prevented taking ^a Salmon or any other fish, in any part of the rivers, streams, or other water *not bona fide* on the coast ^b—that nothing but what is indispensable for fishing, or to the necessities of the fishermen, will be allowed to be landed without payment of duty; and lastly, that these measures will be enforced by cruisers and Custom House Officers, who will remain stationary with the French ships during their stay at Newfoundland, and follow them until their departure at the close of the fishing season. Moreover it might be notified that the sale of herrings and caplin to French fishermen would be prohibited.

(Signed) ANTHONY PERRIER.

9 CUMBERLAND TERRACE, REGENT’S PARK, *July 21, 1852.*

^a In the last degree for apportioning the Fishery stations on the coast of Newfoundland the French have provided for allotment of the Salmon fisheries. This is an encroachment never before attempted.

^b Coast—the edge or margin of the Land next the sea; the shore. It is not used for the Banks of less waters. (Johnson’s folio dictionary.)

Mr. Crowdy to Sir John Pakington.

No. 3.]

GOVERNMENT HOUSE,
Newfoundland, 22nd September, 1852.

SIR: 1. I have the honor to acknowledge the receipt of your confidential Despatch of the 17th August, transmitting certain documents having reference to negotiations between France and Great Britain, with a view to a new definition of the rights of the two nations on the coast of Newfoundland, and requesting from me a report on the whole subject, and my opinion as to what concessions, whether those suggested by Sir A. Perrier, or what others, should be made on either side, in order to close the existing sources of dispute.

2. I have not failed to give my earnest attention to a subject, which is of such vital importance to the interests of this colony, and to seek the opinions of those most calculated to form a right judgment thereon, and I proceed to lay before you the conclusions at which I have arrived.

3. I will commence by adverting to the assumption on the part of the French Commissioner of the right to an exclusive fishery on certain parts of the coast of this Island, founded I presume, on the declaration of his late Majesty George the 3rd, appended to the treaty of 1783, and which right, although exercised by them on a part, and a part only, of what is generally termed the French Shore, has never been admitted by us.

4. The very terms of the Declaration in question whilst forbidding the English fishermen to interrupt by their competition, or to injure the Stages, etc., of the French, recognize their presence, and the whole question would appear to be settled by the concession on the part of our Government, to the citizens of the United States in the treaty of 1818, of the same rights which had been conceded to the French in that of 1783.

5. Before proceeding to notice more particularly the propositions made by the French and English Commissioners respectively, I would observe that the settlements in St. George's Bay, and on other parts of the French Shore, have grown up without protest or complaint on the part of the French—that they have hitherto been of no service to this Colony, adding neither to our revenue or resources, and that the concession to us of any part of this coast would not be of sufficient value to warrant a compliance with any of the propositions of the French Commissioner. In fact there is only one concession to be made by the French Government which would prove of real advantage, and that is, the doing away with their bounties,—but so far from any disposition to this proceeding being manifested, the present Government of France is reported to have so altered them as to make them press with more injurious force than heretofore on the trade of this Colony.

6. I would respectfully repeat that, with this exception, France has nothing of value to yield to us, and that the only prospect of our sustaining our trade in Foreign Markets against bounties equal in amount to what would be considered a remunerative price for the fish, is by such a vigilant and efficient protection of our existing rights as will tend materially to reduce the quantity of fish caught by

the French fishermen, and consequently ensure a more extended market for our own catch.

7. I will now proceed to notice the propositions of Monsieur Bon, which are, that the French Government will recognize settlement, and concede to us a concurrent right of fishery in St. George's Bay. This concurrent right we already claim to possess, but it is little used or recognized—our fishing grounds already in use being sufficient, if protected from encroachments, to supply the wants of the markets, especially so long as they are so largely supplied by our Foreign rivals.

8. In return Monsieur Bon proposes—1st. That the French shall have the right of purchasing and fishing for herring and caplin on the Southern coast, without being subject to any tax or retribution whatever. This concession would be fraught with ruinous results to our fishery, as the power of, in some degree, preventing their procuring bait, is the only or principal means of averting the fatal disadvantages our trade labours under in competing with that of the French, sustained as it is by enormous bounties.

2nd. That they shall have the right to fish during two months of the year (without curing or drying on shore) on that part of the coast of Labrador between the Isle Vertes and the Isle St. Modeste, both included; that is, to establish as a right what has been one of their most injurious encroachments—to guard against which, the colony has this year, at considerable expense, fitted out a protective force, and to the action of which force great importance is attached; the period of two months to which they offer to confine themselves, being the whole period during which fish is caught on this part of the Labrador Coast.

3rd. The right to fish at Belle Isle, in the Straits, which they enjoyed (according to their assertion) up to 1841, without any demur on the part of Great Britain.

This assertion may, to some extent, be true, as it is only since the very injurious effects on our trade, of the French bounty-sustained fishery have been severely experienced, that the importance of confining that fishery to its own proper limits has been so deeply felt.

The Belle Isle Fishery is usually very good; nothing that could be offered us, (except the giving up bounties) would, in the view of those interested in our fisheries, be deemed an equivalent for allowing the French a participation in its benefits.

9. It is true that when in 1845 some negotiation took place between Captain Fabvre on the part of the French Government, and Mr. Thomas, the President of the Chamber of Commerce, and a member of the Executive Council, on our behalf, it was proposed by the latter gentleman that in consideration of the French giving up their right to fish on a part of the Western Coast, they should have an exclusive right on the remaining part on what is termed their Shore, and including Belle Isle; but as I have already stated, the operation of the French bounties has, since that time, been so ruinously felt, and the West Coast could be of so little service to us, that it would be considered as no equivalent for such a surrender.

10. In the foregoing observations I have anticipated Sir A. Perrier's proposals, the adoption of which, I am compelled to say, would cause deep dissatisfaction in the colony, as the strongest objections

would be felt to the yielding the right of fishery in the Island of Belle Isle, or any part of the Labrador coast, or to the removal of any restrictions on the sale of bait.

11. I trust you will not think that I am raising any uncalled for objections to the different propositions made with reference to the settlement of this most vital question—the interest in which is, at this moment, felt with greater intensity, from the ruinous results of the shipments of fish during the last year, arising from the competition in foreign markets of the French, whose bounties enabled them to sell their fish at a price that must bring ruin to our trade, except the quantity caught by them can be diminished.

12. The only mode of doing this is by preventing their procuring bait from our shores, or encroaching on our fishing grounds.

Nothing they can offer would be a compensation for any relaxation on either of these points; and I would respectfully observe, that any negociation founded on any other view, would be not only without advantage, but absolutely prejudicial to our trade.

13. From the information I have derived from those most competent to furnish it, and from the experience I have gained in a long residence, during which I have visited every part of the Colony, I have not deemed it necessary to avail myself of your permission to apply to the Admiral Commanding for a Steamer to enable me to visit any part of the Coast.

14. I shall, in obedience to your directions, transmit a copy of this Report to His Excellency Sir John Gaspard LeMarchant, and to Admiral Sir George F. Seymour.

I have the honor to be, sir, your most obedient humble servant,

(Signed) JAMES CROWDY.

The right honorable Sir J. S. PAKINGTON, Bart., etc., etc., etc.

Sir A. Perrier to the Earl of Clarendon.

LONDON, June 10, 1853.

MY LORD: In compliance with the instructions contained in your Lordship's despatch of the 20th ultimo, I immediately entered into communication with Mr. Archibald, Attorney General of Newfoundland, and Mr. Strachey of the Colonial Office, upon the subject of the negociations with France for a settlement of the question of Fishery rights around that Island.

After our second meeting, it became evident that the opinions of the three parties were so much at variance as not to admit of any prospect of a unanimous decision; it was therefore agreed that Mr. Archibald and Mr. Strachey should discuss the matter between themselves and communicate to me the result of their deliberations.

I have the honor to enclose a letter from these gentlemen, with the amendments which they propose, accompanied by their explanatory notes.

When, six weeks ago, I waited upon the Duke of Newcastle, I explained to his Grace that the proposals made last year by the French being totally inadmissible, your Lordship was of opinion

that a counter-proposal (to be final) should now be made, offering such equitable conditions as could be received, and would, in the event of refusal, cast upon the French Government the breaking up of negotiations, in which case things would remain in the favorable position wherein they have been placed by the protective measures adopted last year. I also stated that the project of instructions for the British Commissioner was prepared in this spirit, and that I felt convinced that these proposals would be rejected, being so much below the French pretensions.

I gave the same explanation to Messrs. Archibald and Strachey, who have taken a very different view of the matter, having considered as a project of Treaty that which was only intended as a project of Instructions for proposals.

The amended project transmitted by these gentlemen is not, in my humble opinion, such as can meet your Lordship's views. It offers nothing more than a confirmation of some of the advantages of which the French are, and long have been (whether right or wrong) in real possession, whilst it would deprive them of many benefits they now virtually enjoy. Therefore, as all would be loss to them without any compensation, it cannot be expected that these propositions would be accepted.

The present local interest of the Newfoundland merchants seem to be the sole object kept in view, without any consideration whatever for the international difficulties in which Her Majesty's Government are involved by a long toleration of the French interpretation of treaties made at remote periods, when the British Settlements in Newfoundland did not extend beyond a small portion of the Southern and Eastern coasts of the Island;—when the best fishery (that on the Banks) was entirely carried on by ships from Great Britain, and the Colonial Fishery was confined to the long-shore fishing on the Southern and part of the Eastern coasts; and when the fisheries on the Western and Northern coasts, and along the shore of Labrador, were of little or no importance to the colony.

I must, however, exempt Mr. Strachey from this last observation. He is aware of the difficulties to be contended with, for he admits "that much has passed to commit the British Government to the more enlarged interpretation respecting fixed Settlements, adopted by Mons. de Bon." He also acquiesces in proposing the cession to the French of a right of Fishery to Belle Isle in the straits, a measure which Mr. Archibald strongly opposes.

With reference to the sale of bait to the French on the Southern coast, the total objection of this measure^a is not in accordance with the pressing solicitations from the colony for a free and reciprocal trade and right of fishery, with the United States. The Americans frequent the bank fishery for which they are obliged to bring bait from the coast of America. When they acquire the right to take it themselves on the coast of Newfoundland, they are likely to become

^a Notwithstanding this rejection, Messrs. Archibald and Strachey think that "if the proposed Treaty of Reciprocity with the United States takes place, there can no longer be the same motive, nor indeed could it be equally practicable, to resist the French supply of bait." (Enclosure No. 1, page 24, in Messrs. Archibald and Strachey's despatch.)

much more formidable competitors in foreign markets than the French—for the produce of their bank fishery will soon cut out, by its well known superiority, the small fish of Newfoundland catch, taken along the coasts of the Island and of Labrador.

With respect to a further reference to the Legislature of Newfoundland before coming to a final decision on the proposals to be made to France, it is entirely a matter of consideration for your Lordship; but I should consider myself deficient in my duty were I not to state the impression left on my mind that this suggestion, emanating from the Newfoundland Attorney General, is, that the proposed delay is with the view of keeping back the question of sale of bait as a means of bargaining with H. M. Government for Free Trade with the United States.

It would be trespassing too much on your Lordship's time to continue refuting the objections contained in the enclosed documents, and to renew the oft-repeated arguments against the concurrent right of fishery proposed to be offered to the French on the Coast between Cape Ray and Bonne Bay; but there remains one proposal of these Gentlemen which is of too serious a nature not to be noticed, namely, the admission by Treaty of a sort of French jurisdiction in places reserved to French fishery.

The end may be obtained without this sacrifice of principle; for when warned that they must not fish nor trespass within the French boundaries, British transgressors will have no right to complain of any act of the French to uphold their privileges.

These acts may, without inconvenience, be overlooked; but it would, I conceive, be a dangerous precedent to concede, by Treaty, the exercise of any right pertaining to the sovereignty of the Island.

I have, etc.,

(Signed) A. PERRIER.

The right honorable the EARL OF CLARENDON, K. G.,
etc., etc., etc., Foreign Office.

[Inclosure.]

Messrs. Archibald and Strachey to Sir A. Perrier.

COLONIAL OFFICE, DOWNING STREET, 4th June, 1853.

SIR: In pursuance of the instructions given to us by the Duke of Newcastle, to take into consideration the project of Treaty which you have suggested for negotiation with France, in reference to the Newfoundland fisheries, and communicate with you on the subject, we transmit to you, herewith, a statement of such amendments of the project as we think, after the discussions which we have had with you, to be advisable, together with observations in explanation of them.

We have, etc.,

(Signed) E. M. ARCHIBALD.
W. STRACHEY.

Sir A. PERRIER.

[Enclosure 1 in Letter to Sir A. Perrier.]

Project of proposal to France for the Settlement of the Newfoundland Fishery Question.

Dated 4th June, 1853.

The Proposal made on the 5th July last by Monsieur de Bon on the part of the French Government cannot be accepted for the following reasons:

1st. The right of inhabiting St. George's Bay already belongs to H. M. subjects, for although they are debarred by the terms of the Treaty of 1783 from forming Fishing Establishments on the coasts where French subjects may fish during the season, they are nevertheless entitled to establish themselves for all other purposes on all parts of the coasts of Newfoundland; this is one of the territorial rights belonging to the Sovereignty of the Island, none of which rights (except that of temporary fishing) has ever been conceded or can be conceded by Her Majesty's Government.

2nd. Concurrent fishery cannot be carried on by British and French subjects without mutual interruptions. This would inevitably lead to a renewal of those quarrels to prevent which the Treaty of 1783 was expressly made.

3rd. For the same reason the French cannot be permitted to fish for bait on the southern coast of Newfoundland.

1. That the terms "établissements sédentaires," or fixed settlements, in the declaration were understood at the time of the Treaty to have reference only to fixed or permanent fishing establishments, appears from Governor Campbell's Proclamation of September, 1784, as well as from the Act of 1787, quoted by Sir A. Perrier; at the same time it is right to bear in mind that much has passed to commit the British Government to the more enlarged interpretation of the phrase adopted by Monsieur de Bon.

2. The effect of this paragraph appears to be an indirect admission of an exclusive right of Fishery in the French, and is at variance with what we have always contended for and maintained on this point (see Lord Palmerston's note to Count Sebastiani, July 10, 1838). It is only where a concurrent fishery would actually interrupt the exercise of the French right of fishing, that it would be inconsistent with the Treaty and Declaration; moreover we think the impracticability of carrying on a concurrent fishery without mutual interruption too broadly stated in the paragraph. We believe that it is quite possible, and that it has been the actual practice, both before and since the Treaty of 1783, for both parties to use on amicable terms parts of the coast not greatly frequented by either, as for example between Cape Ray and Bonne Bay. We think it advisable therefore on these grounds to omit this paragraph.

3. The power to concede to the French permission to fish for bait on the southern coast of Newfoundland is vested solely in the Imperial Government; but as local interests are deeply involved in the question of such a con-

cession, and as representations have been made from time to time by the commercial body and the Legislature of Newfoundland, complaining of the great injury arising from the encroachments of the French in fishing for bait, and as it appears from the late acting Governor's answer to the recent reference that the local objections to giving the French any facilities for obtaining bait still continue, we think that the concessions should be refused for these reasons rather than on the ground of inconvenience from a concurrent fishery.

The granting permission to purchase bait without hindrance is more peculiarly matter of local concern, and a concession which there would be legal difficulties in making without the concurrence of the Local Legislature, which not only possesses in common with other Colonial Assemblies (under recent Imperial Acts) full power to levy duties independently of Parliament, but passed in 1845, with concurrence of the Queen in Council, an Act (8th Vic., c. 5) imposing a high export duty on bait for the purpose of checking the traffic in it. This Act is still in force, and the most recent accounts do not show any disposition on the part of the Local Legislature to repeal it.

The Imperial Parliament has, without doubt, the power of regulating the traffic in bait, in supercession of all local laws, but this would be an unusual stretch of authority.

For these reasons we think Monsieur De Bon's proposition must be rejected as regards not merely the fishing for bait, but the traffic in it also.

4. This paragraph, if our preceding views are adopted, may be introduced thus. Her Majesty's Government also find that British interests do not admit of any participation by the French in the Fishery, etc.

4th. Neither can they be admitted to any participation in the fishery on the Coast of Labrador, where (especially in the Belle Isle Straits) British fishermen resort in great numbers.

5th. The Island of Belle Isle in the Straits being a British possession not included in any of the concessions made to France by Treaty, no French right to fish there can be recognized.

Her Majesty's Government being desirous of bringing the Newfoundland Fishery question to a prompt and satisfactory solution, authorize Sir A. Perrier to make the following propositions:

1st. British subjects shall not fish during the season on any part of the coasts of Newfoundland where French subjects enjoy by Treaty the right of fishery.

2nd. The term coast (the literal meaning of which is the shore or margin of the sea) being vague and open to contradictory interpretation, it is proposed to determine its signification with reference to the fishery rights in question, as follows:—

The word Coast, so far as it relates to French fishing, curing, or drying, and erection of scaffolds and huts for fishery purposes at Newfoundland, shall be understood to mean the strand and the ground extending inland one-quarter of a mile from high water mark; and where any river, creek, arm of the sea, or other opening less than three miles wide, intervenes, then a straight line drawn from headland to headland, across this aperture, shall be considered as equivalent to high water mark.

3rd. No British fixed settlement of any kind shall be made in the Districts reserved to France nearer to the sea than the coast limits of a quarter of a mile.

We think it would be advisable to state to the French Government rather more fully the reasons why our own proceeds to authorize a counter project. For the terms we would suggest, see the preamble of the Draft Project in our separate paper.

It is advisable to define a sea limit within which British subjects shall be prohibited from fishing on the coast. We therefore suggest that this proposition should be amended to the terms of Article 1, of the separate paper.

We would suggest, in place of the first part of this proposition, Article 3 of our separate papers.

This latter part of the proposition would shut out the French from several of the harbors now used by them. But as between Cape John and Bonne Bay there are no large rivers, nor any in which we understand the tide flows beyond a short distance, we suggest, instead of this latter passage, the insertion of a provision that the right of fishery shall in no case be enjoyed by the French in any creek, river, or stream, above the flow of the tide, and shall be limited to salt water only, as in Article 2 of the separate paper.

We fear, with Sir A. Perrier, that the French having acquired by the Declaration of 1783, a right to the removal of fixed settlements, will not be satisfied unless this right is maintained in the present Convention, and interpreted in some more general sense than one confined to fishing establishments only.

But an obligation on our part to remove settlements in a general sense would obviously be very inconvenient to us, if not completely beyond our power to discharge. It would, therefore, we think, be advantageous to both parties to concede to the French

themselves an authority in certain cases to prevent encroachments, but under such limitations as shall not prejudice our rights of sovereignty, or our claim to consider the existing duty of removal as applicable to fishing establishments only.

We think it politic, also, to provide that an acquiescence on the part of the French, for a specified period, in any erection made to the prejudice of their fishery rights, shall cast upon them the payment of compensation in case of the subsequent removal at their instance of any such erection.

In the same manner we think it advisable to give the French a certain authority to protect their rights against British vessels or boats trespassing on the fishing grounds assigned to the French.

The general effect of the authority we thus propose to confer on the French by land and water, would simply be to legalize and regulate an irregular interference of the French with our settlements and vessels which already exists in practice, and which, in the absence of police arrangements on the part of the British Government, obviously cannot be prevented. It will, probably, not be convenient to introduce such arrangements on the greater part of the coast assigned to the French within any given time.

But according to our plan such arrangements, whenever made by the British Government, would at once and entirely supersede, within their range, the authority otherwise conferred on the French.

We believe then an authorized system of this kind would be far less productive of collision than the continuance of a practice of French control, which British subjects have a legal right to resist, but of which the British Government, so long as it gives the French no active protection of its own, has no just ground to complain.

For the terms we would propose, see articles 4, 5, and 6, of the separate paper.

4. All Fisheries inland of the coast limit are entirely British.

5th. French subjects shall not make use of any mode of fishing at the entrance of Rivers and Creeks (nor anywhere else on the Coast) of Newfoundland which would be illegal (on the coast or) in the Rivers of France.

6th. The right of hook and line fishing and of curing and drying at Belle Isle in the Straits, shall be conceded to French Fishermen during the season, but they must not use seines or any other kind of Nets. During the time of French Fishery, British subjects shall neither fish, cure, nor dry, on the said Island.

7th. The French right of fishery along the Straits of Belle Isle, so far N. as the Island of Belle Isle, shall extend half way across from the shores of Newfoundland and Belle Isle towards the coast of Labrador.

8th. The right of fishery on these parts of the coasts of Newfoundland where the French may fish under treaty, shall commence on the 1st May and end on the last day of October in each year.

9th. The boundary between the British and French Fishery limits on the East coast of Newfoundland shall be the point near Cape St. John agreed upon by Captain Darley, of H. M. S. *Electra* and Captain Fabvre in 1843.

10th. British Fishermen shall be allowed to sell Herring, Caplin, and any other kind of bait to the French.

11th. In exchange for the above mentioned Concessions, France shall cede to Great Britain all Fishery Rights whatever on the Coasts between Cape Ray and Point Verte the Northward of Bonne Bay, on the West Coast of Newfoundland.

This seems hardly necessary, and may be construed as an indirect admission that they are not ours already.

Very advisable provision as to rivers—but should not restrict the French in their fishery on the open coast. Amend as in Article 2, of the separate paper.

If it is thought expedient to concede to the French a right of Fishery at Belle Isle, we would suggest that the proposition should be introduced as in Article 12, of the separate paper; but upon the question of making the concession—see our concluding remarks.

The substance of this provision is embraced in the Draft of Article 1, in the separate paper.

We would suggest a slight change in the wording of this proposition, as in Article 7, of the separate paper.

We understand that such a boundary was agreed upon, as here assumed, and that a map of it is in the possession of the Local Government, but we are unable to hear of there being any document in the public offices in this country to admit of this subject being included in the propositions to the French, if made at this moment. On the facts being ascertained, we would suggest an amended proposition as in Article 10 of the separate paper, having reference to the boundaries on both sides of Newfoundland.

We suggest the omission of this proposition, for the reasons above stated.

We think there could be no objection to permitting the French to fish concurrently with the British, and to dry and cure fish in unoccupied places on shore, until a year's notice shall have been given to them by the British Government. Under such an arrangement,

by which we should have the power of withdrawing the privilege in the event of its being abused, or of our requiring the exclusive use of this coast for ourselves, it is probable the French would continue without detriment to British interests, to derive almost as extensive advantage from this part of the coast as that which they now enjoy. We therefore propose an addition to this proposition as in Article 8, of the separate paper.

To remove doubts and prevent disputes, it will be well to insert at this place a proposition recognizing the right of the French during the season to a fishery at Groais Isle and Belle Isle South, in like manner as on those parts of the Coast of Newfoundland assigned to them.

Whatever the claim of the French from occupancy may be, it is not quite clear that those Islands were comprised in the original concessions to the French. For the terms we would suggest, see Article 9 of the separate paper.

We suggest for security a provision as in Article XI of the separate paper, to the effect that the French rights of fishery shall stand on the footing of former Treaties in all particulars not altered or modified by this Convention.

We also suggest a final provision as in Article 13 of the separate paper, for fixing a time for bringing the Convention into operation.

Proper in any event.

Sir A. Perrier will announce to the French Commissioner that it is the intention of H. M. Government to keep Cruisers on the coast and to establish Stations on Shore at Belle Isle in the Straits and at any other places where it may be deemed expedient.

The following further concessions may be agreed to by Sir A. Perrier if he can thereby bring his French Colleague to a final adjustment of this question:

1. Half a mile to be the Coast limits instead of a quarter of a mile.

A quarter of a mile appears to us sufficient, but we see no particular objection to half a mile if desired by the French.

2. Fishery at Belle Isle without confining the French to hook and line fishing.

As to the 2nd point, see our concluding remarks.

3. Cape St. Gregory to be the French boundary instead of Point Verte; thus leaving Bonne Bay as a Harbor of Refuge to the French.

As to the 3rd, considering that the Reports from the Colony have almost invariably represented Bonne Bay as a part of the Coast on which it is an object to get rid of the French rights, we think it would not be advisable to leave it out.

APRIL 23, 1853.

[Inclosure 3 in Letter to Sir A. Perrier, dated 4th June, 1853.]

Draft Project.

Her Majesty's Government being unable to accede to the proposals of Monsieur de Bon, for the reasons stated, but being as desirous as the Government of France to preclude by every possible means the disputes between the two Governments, to which the existing Treaty stipulations on the subject of the Newfoundland fisheries have been shown by experience to tend, more particularly in consequence of the ambiguity of some of the leading provisions, and being of opinion that the ambiguous rights admit of a compromise not interfering with the main advantages at present realized by the respective parties, empower Sir A. Perrier to make the following propositions:

1. British subjects shall not fish during the season hereafter specified within ——— Marine miles of the coast of Newfoundland, or the coasts of the adjacent Islands, on which French subjects shall continue to enjoy (or shall acquire^a) the right of fishery under this convention; or as regards such of those coasts as are separated from British coasts, not so assigned to the French by a Channel not exceeding ——— Marine miles in width, not nearer than the middle of such Channel.

2. The right of fishery shall, in no case, be enjoyed by the French in any Creek, River or Stream above the flow of the tide, and shall be limited to the salt water only. The French shall not make use of any mode of fishing in or at the entrance of any Creek, River, or Stream, which would be illegal in France.

3. The operations in connection with the fishery, which the French shall have a right to conduct on shore, shall be limited to a strand bordering upon the waters in which the French shall have a right to fish as above defined, and extending inland a quarter of (or half) an English mile from high water mark. The French, however, shall be allowed to cut wood for the purposes contemplated in the British Declaration, attached to the Treaty of 1783, upon unoccupied land at such further distance inland from the strand as may not be inconvenient to the British Government.

4. No erection obstructive of the exercise of the French rights of fishery, whether a fishing establishment or a building or enclosure of any kind, shall be allowed on the strand assigned to the French; save works or erections made or occupied for the purposes of defence, or

^a These words to be used if a Fishery at Belle Isle be conceded to the French.

other public use or purpose, under the immediate direction of the British Government.

5. As the British Government may not possess officers of its own on parts of the coast on which it may be necessary to enforce the preceding article, its enforcement shall devolve under such circumstances upon the French Commandant on the station of Newfoundland; and accordingly he and the officers or agents authorized in writing by him, shall be at liberty to abate or remove any building or enclosure on the strand assigned to the French, if deemed by such Commandant to be obstructive of the exercise of the French rights, in the event of there being no duly empowered British authority established within 5 English miles of such erection. But no erection shall be so abated or removed by French officers or agents until two months after notice in writing has been given to the occupant or occupants, and to the Governor of Newfoundland.

And if within the period of such notice, or at any time before the intended proceeding shall have been carried into effect, the Governor of Newfoundland shall signify his desire that the question of removing or abating any such erection should be referred to the consideration and determination of the respective Governments in Europe—the French Commandant shall stay the intended proceeding pending such determination; and if it be authorized by such determination, shall not be competent to carry it into effect except on the expiration of a further notice of one month to the occupant or occupants, and to the Governor of Newfoundland.

Nor shall any building or enclosure, for the removal of which the French Authorities may have refrained in three successive fishing seasons from taking the steps within their competence, be subject to removal until after equitable compensation, to be arranged between the British and French Governments, has been paid by the latter for the loss which such removal may occasion to the parties interested.

6. In like manner the officers commanding French vessels of war on the Newfoundland station shall be at liberty to remove British vessels or boats from the waters assigned to the French, as defined by this convention, if fishing in those waters in the event of there being no duly empowered British authority established within five English miles of the place of such act of encroachment.

7. The season during which the French shall be entitled to exercise their rights of fishery, shall not commence earlier than the 1st day of May, nor end later than the last day of October, in each year.

8. In consideration of the concessions on the part of Great Britain, involved in the above arrangements, France relinquishes to Great Britain all fishery rights whatever, on the coasts and Islands between Cape Ray and Point Verte, (to the Northward of Bonne Bay;) but the French shall be permitted to fish concurrently with the British, and to cure and dry fish on unoccupied parts of the shore on those coasts and Islands until the close of any fishing season next after the expiration of a year's notice to be given by the Government of Great Britain to the Government of France.

9. The coasts upon which the French shall retain their fishery rights, shall be recognized to include those of the Islands of Groais and Belle Isle, on the Eastern coast of Newfoundland, and of all the other Islands smaller than those which are adjacent to the Island of Newfoundland, between Cape St. John and Point Verte.

10. The boundary of the French fishery, on the East Coast of Newfoundland, shall be the point at Cape St. John, and the line thence extending seawards, agreed upon in 1843, between Captain Darley, of H. M. S. *Electra*, and Captain Fabvre of the French Navy, and the similar boundary on the West Coast shall be a line carried seaward from Point Verte in a direction due West.

11. The French rights of fishing shall stand on the footing of former Treaties in all particulars, not altered or modified by this Convention.

12. In consideration of the concessions on the part of France, involved in the above arrangements, the French shall enjoy the same fishery rights, whether as to land or water, on the Coasts of the Island of Belle Isle in the Straits of that name, as the latter shall enjoy as above defined on the Coast of Newfoundland; except that they shall be restricted to a hook and line fishery only, and shall not use seines or nets of any kind in the waters round Belle Isle, thus assigned to them.

13. This Convention shall take effect from the commencement of the fishing season of 1854.

Mr. Ker B. Hamilton to the Duke of Newcastle.

No. 67, Executive.]

GOVERNMENT HOUSE,

St. John's, Newfoundland, 28th September, 1853.

MY DEAR LORD DUKE: I have the honor to acknowledge the receipt of your Grace's Despatch of the 19th ultimo., marked Confidential, transmitting the copy of a communication from the Department of Foreign Affairs, with other Documents in reference to a contemplated revision of the subsisting engagements with France, respecting the Newfoundland Fisheries; and expressing the wish of Her Majesty's Government to receive a further and final report upon the subject from this Government.

2. In obedience to your Grace's commands, I have given my earnest consideration to this important matter, and in order that I might be the better able to furnish your Grace with a distinct exposition of the views and wishes of the inhabitants of the Colony in regard to it, I have considered it desirable to submit the substance of your Grace's communication, confidentially, to the members of my Council, and to elicit from them, for my information, the expression of their views upon the subject matter in question. I have also received from the Attorney General an explanation of the particulars of the discussions which took place between Sir A. Perrier, Mr. Strachey, and myself.

3. In now reporting to your Grace what are the views and wishes of the Colony in reference to this question, and in submitting the proposals of such an adjustment of it as, in the opinion of the Council, would be the least detrimental to British rights, I must beg your Grace's permission to offer some preliminary observations, the freedom of which, I trust, will be pardoned, in consideration of the magnitude of the interests involved.

4. I assure your Grace, that I by no means undervalue the importance of effecting a settlement of the question, and of preventing by any practical means, further disputes. Still, while I feel that the consideration of the subject ought to be approached in no merely com-

mercial spirit, but with a due regard to the maintenance of the honor of the Crown in the faithful observance of the treaties which guarantee to the French the enjoyment of their privileges, I am also sensible that there are involved in the consideration of the question circumstances affecting in the highest degree the prosperity of this colony, whose interests have been confided to my care, and which are of hardly less importance to all Her Majesty's subjects concerned in its fisheries, requiring the exercise of great vigilance in the maintenance of our existing rights, and of firmness in resisting the demands of our rivals for further concessions to which they have no equitable claim.

5. I do not now propose to enter into a discussion of the claim of the French to an exclusive right of fishery on that part of the coast on which a right of fishery was assigned to them by the Treaties of Utrecht and Versailles. The absence of any foundation for such a claim is so unanswerably shewn, and the true interpretation of the Treaties so clearly laid down in Lord Palmerston's note of June 10th, 1838, to the French Ambassador, Count Sebastiani, as to render unnecessary any further argument on this point. The assertion of the claim is, I have reason to believe, of comparatively recent date; and, from the reference made to it in the occasional correspondence of the French Naval Officers on this station, appears not to be founded on the words of the treaty, but rather on the proclamation of Sir Charles Hamilton, of 1822. This proclamation, as well as two preceding ones in 1802 and 1788, were issued under an Act 28 Geo. 3, Cap. 35, passed not until five years after the treaty of Versailles, (in consequence, it would appear, of the lawless conduct of British subjects) in order to give our Government power, if necessary, to enforce the terms of the treaty, and to restrain by extreme measures British subjects from interrupting the French fishery. For, if the Ministerial Declaration on the part of Great Britain, annexed to the treaty of Versailles, be relied on as the foundation of the French assumption, it must be taken as a whole; and the terms "13th Article of the Treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party;" must have some meaning.

The whole history of the fishery, from the time of the Treaty of Utrecht, furnishes the construction to be put upon these terms. Under that Treaty, the fishery was always concurrent. The mode in which that fishery has been carried on, concurrently by the two nations, is clearly evinced by the Proclamations of Governors Palliser, Shulham, and Duff, set out in the printed papers accompanying your Grace's despatch. Again, the ministerial declaration is in this respect in accordance with the 5th Article of the Treaty, which is the more important Document, and which declares, that "the French fishermen shall enjoy the fishery which is assigned to them by this present article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht."

6. In reference to the meaning of the terms "fixed settlements", and the proper construction of the declaration that His Majesty would cause them to be removed, I have derived much information from two members of my Council who have been in this Island for upwards of half a century, both of them, for a long period of years after their arrival, and one still, largely engaged in the Trade and

Fisheries. During the War which ended in 1783, and the same circumstances occurred during the subsequent Wars ending respectively in 1801 and 1814—the Fishery was engrossed by the British; and fishing establishments of a substantial nature had been fixed by them in all the various harbors on the Coast on which the French were assigned a right of Fishery, to such an extent as effectually to prevent the fishery being carried on as it had been under the Treaty of Utrecht; and hence the necessity of their removal to admit all parties to the fair enjoyment of their rights. At this time we had little or no fishery at the Labrador. At the close of the last war and for some years afterwards, British subjects still retained exclusively their fishing establishments, and after the lapse of about seven years, a further Proclamation was found necessary and was issued accordingly. The French soon resorted to the Coast in such numbers as to prevent by force the British Fishermen from occupying the former locations; and under these circumstances, the latter, with few exceptions, abandoned the fishery and betook themselves to the Labrador. There are nevertheless, on the North East Coast, within the limits assigned for the French fishery, as well as in St. George's Bay as elsewhere on the West Coast, not a few British subjects who, and whose ancestors, without hindrance or interruption to the French, have exercised a concurrent fishery continuously, since the Treaty of Versailles. The right of British Subjects to reside on the Coast, for which purpose permanent habitations and buildings must be occupied, is in no manner prohibited by the Treaty. But the assumption by the French of an exclusive right of fishing in the waters off the Coast, and at such distance from the Coast as they may arbitrarily prescribe, (for no limit is defined in the Treaty), is still more unfounded, and it has never been admitted, since it would be productive of the most injurious consequences to British Subjects.

My object in briefly adverting to these particulars is not for the purpose of arguing a proposition which has been disposed of so conclusively by Lord Palmerston in his note above referred to, but rather to shew, in reference to the arrangement which I shall presently suggest, that British subjects are entitled to the enjoyment of valuable rights on that part of the coast, and in the adjacent waters where the privilege of fishery has been conceded to the French; which rights ought not to be renounced on even a limited part of the coast, without a commensurate equivalent.

8. But while the British Government, from a sincere desire to carry out the Treaty with the utmost advantage to the French, have discouraged British subjects from resorting to the greater part of the "French Shore" as it is called, the policy of the French has, in return, been constantly aggressive, and their fishermen have been guilty of incessant violations of the Treaty in various ways, and of the most serious encroachments on fishing grounds to which they have no pretence of claim; the resistance and prevention of which have involved, and still involve great trouble and expense on the part of Her Majesty's Government. These encroachments and violations of the Treaty have been the subject of reiterated complaints from the Legislature and the Commercial Body of this Island, and are noticed in the yearly reports of the Naval Officers appointed to inspect and protect the fisheries. Among the more prominent of these causes of complaint, I may mention, first, the practice of cutting and taking away

without stint from the Bays of the Southern Coast of the Island, the most valuable timber, (a) a privilege which they had permission to enjoy in the Bays of Fortune and Despair only, for one, or at most two years, after the last Treaty of Peace;—the practice of fishing on that part of our coast opposite to the Islands of St. Pierre and Miquelon, in many cases to the absolute exclusion and expulsion of our fishermen; the still more injurious practice of fishing for bait in the harbors and coves of Placentia and Fortune Bays, and of digging for shell fish on our shores—a practice which, together with the illicit traffic in bait with our people, is not only absolutely destroying the fishery in those Bays, but, what is worse, likely to lead to the extermination of the Bait itself—their extensive encroachments until very recently at Belle Isle and the Labrador—their usurpation of the Salmon fisheries in almost all the rivers and streams running into the sea within the coast limits assigned to them;—the erection of buildings and establishments not authorized by Treaties—the very injurious effects upon our shore fishery of their practice of bultow fishing on the Banks, not authorized, it is contended, by the Treaty of Utrecht;—and other minor matters which, although it is true we have not formally complained of them, ought not to be excluded from consideration under present circumstances.

9. On the other hand, notwithstanding that the French Naval Authorities charged with the protection of the fisheries, use the utmost vigilance in preventing any interference with their rights by our people, complaints from thence against British subjects are limited almost entirely to occasional larcenies from the French establishments, while their owners are absent from the coast. In fact, during the fishing season, their means of preventing by force any fishing by British subjects are such as effectually to discourage all attempts of the kind.

10. I can, therefore, assure Your Grace that it is the unanimous feeling of the inhabitants of this Colony, that so far from the French having any just ground of complaint, and from being entitled upon a revision of existing treaties to ask any further concession, it is rather British subjects who are entitled to indemnity for injuries to our fisheries, direct and consequential, resulting from the encroachments of the French, and their abuse of the privileges conferred upon them, no less than from the forbearance of the former to exercise rights to which the letter of the treaty entitled them—rights which, though they may have been suspended in some localities, have never been surrendered. And I may add that I feel confident, that, injurious to their interests as have been the operations of the existing treaties with France, the inhabitants of this colony would deprecate extremely any alteration by which their rivals might obtain privileges of fishing upon any other parts of the shore of this Island or its dependencies. Such, indeed, is the nature of the struggle which they now have to maintain in their competition in foreign markets with the French, owing to the effect of their bounties, that any additional advantage conceded to the French would effectually turn the scale against us and be ruinous to the Trade and Fisheries of this Colony.

11. Whatever may be the opinions formed by Her Majesty's Government in consequence of the communications of my predecessors on this subject, the current of events during late years has so devel-

oped the effects of the aggressive policy of the French, and the consequent gradual increase of their fishery, and corresponding decline of ours, that I should be wanting in candour if I did not state my conviction, that any further concession would be viewed with extreme dissatisfaction, not alone by the inhabitants of this colony, but by those of the neighboring provinces entitled to participate in our fisheries. Such, indeed, is the prevailing sentiment on this point, that I feel no hesitation in saying that this colony, while it still confides in the power of Britain for the protection of its just rights, and the maintenance of its true position, as an integral of the empire, would, however, if called upon, accept the alternative referred to in Mr. Addington's letter, of incurring the expense of protecting its fisheries, rather than consent to any extension of privileges to the French.

12. Having said thus much in exposition of the views and wishes of the inhabitants of this colony, I will, in corroboration of them, state my own opinion, that in any modification of the existing treaties which may be made, it would be extremely unwise to cede to the French a right of fishery at Belle Isle. In regard to the material difference on this point between the opinion of the Newfoundland Authorities, as expressed in 1844, and those put forward by the Attorney General, to which Mr. Addington refers, I may observe that the contemplated proposition to cede the fishery there, at that time, was made at the instance of Sir John Harvey alone, without consulting with his Council, and from an over estimate of the value to us of excluding the French from the fishery on the west coast; and that notwithstanding the importance of the retention of the fishing at Belle Isle was not so well understood as at present, still I have reason to believe that such an exchange and concession would at that time have caused general dissatisfaction. I feel it due to the Attorney General to say that the objections offered by him to this proposition are such as I am sure are concurred in by the whole colony; and are confirmed by the addresses of the Legislature on this subject, which have since been transmitted by me to your Grace.

13. When it is borne in mind that the Americans as well as British subjects from the neighboring Colonies, in addition to the people of this colony, fish on the Labrador coast, employing in all not fewer than 1,000 vessels yearly; and how prejudicial to the fishery there would be the possession by the French of the Fishery at Belle Isle, where, from its peculiar position, and the use of the seines and possibly of bultows, they would most effectually diminish the supply of fish upon the Labrador: the impolicy of such a concession—apart from the value of the fishery at the Island itself—will be further apparent. Again, as it is the close proximity of the Islands of St. Pierre and Miquelon to our Southern Coast, which has led to the very serious injuries to our fisheries in that quarter, of which so many complaints have been made, so the possession by the French of Belle Isle would greatly facilitate encroachments on the neighboring Coast of Labrador, and lead to many of the same evils there.

14. The maintenance of the integrity of our fisheries is now of the utmost importance to this colony. I have lately had occasion, in transmitting the Blue Book Returns for 1852, to call your Grace's attention to the extent and value of the Seal Fishery and to the necessity of sustaining and fostering it. Its connection with, and dependence

upon the Labrador Fishery, which was not then pointed out, is a consideration also of the first importance. During the last year no fewer than 127 vessels were added to the trade of this colony; and of these about 70 were of the larger class employed in the Seal Fishery, in which there are now employed, in all, from this Island, about 400 sail, which, (the greater number of them at least) afterwards during the season find employment in the fisheries at Labrador. While, therefore, the damage to the fishery on the Labrador, by the cession of Belle Isle, would be a just ground of complaint by the inhabitants of the United States, and of the other North American Colonies, it would be specially felt by the inhabitants of Newfoundland; and the renunciation by the French, in return, of their right of fishery between Cape Ray and Bonne Bay, would be very far short of an equivalent.

15. I may further observe, that the Fishery and Trade carried on by British Settler at St. George's Bay—the Fishery being chiefly in Herrings caught in the months of April and May, and the Trade being carried on almost entirely with Nova Scotia and the other Provinces, are of but little value to the general commerce of the rest of this Island, which is now, as I have shown, so dependent on the Labrador fisheries.

16. I must next advert to the proposition of Sir A. Perrier, that the French shall be permitted to purchase Bait from the British Fishermen; by which of course is meant that they may purchase it without restriction. The injury to our Trade and Fisheries of this Traffic have been so often and so forcibly pointed out in the Petitions from this Colony, and in the Reports of Naval Officers on the Station, that it is needless to repeat them. In any new convention that may be made, it should be a *sine qua non*, if the Sale of Bait is made a stipulation, that the right of purchase must be subject to such regulations as may be made by the Local Legislature for the protection of the breeding and the preservation of the bait; regulations that are now imperatively demanded, and without which the Bait in our Southern Bays will in time be exterminated. As regards the effect upon this part of the question of embracing Newfoundland in any Treaty of Reciprocity between the North American Colonies and the United States, by which the Americans may be admitted to a participation in our fisheries, it should, as I have no doubt it will, be provided that the citizens of the United States shall, equally with British subjects, be subject to such Legislative Regulations as may be established for the protection and preservation of Bait. Regulations of this nature would, under such circumstances, be obviously matters of common interest to all. On this subject, which in the present state of our fisheries, and in anticipation of any change of our Commercial system, is one of great importance, I shall probably again take leave to address Your Grace.

17. The observations which I have now made, it will be seen, have reference to the two points of Concession in Sir A. Perrier's draft proposals which he recommends being offered to the French together with the exclusive right of fishery on that part of the Coast between Cape John and Bonne Bay, as an equivalent for their renunciation of their right of fishery on the rest of the Coast between Bonne Bay and Cape Ray. I have stated to Your Grace the extreme dissatisfaction which would be caused in this Colony by any such exchange, and from the best information I have been able to gather from

various sources, I can only reiterate my own opinion that the gain to us, as respects the fishery, and the corresponding loss to the French, would be of little value. But by embracing in the compromise the cession to them of the Fishery at Belle Isle and the unrestricted purchase of Bait, we should offer decidedly preponderating advantages to them, attended with consequential injury to our fisheries, which cannot now be easily estimated; to offer these in the expectation entertained by Sir A. Perrier, that they will be refused, and lead to the breaking up of the negotiation, unless we are prepared to yield them in any event, and in my judgment, they certainly ought not to be ceded—is hardly safe as regards ourselves, and hardly fair as respects the French. Moreover a distinct offer now of concessions which have never been formally offered before, will, even if refused, carry with it admissions as to the nature of their claims, which ought not to be made, and will in any future negotiation furnish them with a justification for reiterating their demands for these concessions.

18. The last propositions suggested by Mr. Archibald and Mr. Strachey, I mean the giving to the French an exclusive fishery or part of the Coast, and a concurrent fishery on the residue, are considered by the Council as altogether too liberal to the French. In view of the contingency that Public Affairs in Europe might, at no very remote period, permit our people to resume the active enjoyment of their former fishery on the French Shore, so much more valuable than that at the Labrador, the Council is opposed to even a mutual exchange of rights, or to any modification of the Treaties by which British Subjects shall absolutely renounce their right of fishery on any part of the Coast. But if the Imperial Policy requires that such an exchange should be proposed, the Council thinks it should be confined to our yielding all right of fishery on that part of the Coast between Cape John on the East and the 50th degree of latitude on the West Coast; the French renouncing their right of fishing from thence to Cape Ray.

19. If this proposition be approved of as a basis, I would suggest of course, in accordance with the terms contained in the draft proposals transmitted to me, that British subjects be excluded from fishing 3 marine miles off the Coast assigned to the French; that the Fishery at Belle Isle South, and Groais, and other smaller Islands adjacent to the Coast, be conceded to them; their fishery in the mouths of Rivers not to be above the flow of the tide; a certain width of strand, subject to the use of any portion of it by the British Government for public purposes, to be assigned to them; and no mode of fishing at the mouths of rivers to be used which is illegal in such cases in England.

20. The right of the French, under certain limitations, to expel intruders, as proposed by Mr. Archibald and Mr. Strachey, it is unnecessary to concede, although in practice I do not apprehend it would be attended with any ill consequences, the proposal being guarded by a provision for superseding the exercise of the right by the appointment of authorities under the direction of the British Government.

21. As a mode of compromise, the arrangement above suggested will leave the French in the absolute possession, for the purpose of the fishery, of the greater part of the Coast between Cape John and Cape Ray, and of almost the whole of it upon which the Cod fishery

is of value. On the other hand, it would be less injurious to the general trade and fishery of this Island, and I believe, to the general interest of the British Fisheries in these seas, if—extreme as the alternative may appear to those at a distance—British subjects were absolutely prevented from fishing at all on the West Coast, or occupying fishing stations there, during the season in which the French are entitled to resort to it, than to concede to the latter the further privileges contemplated in Sir A. Perrier's proposals. But the course I have alluded to could not now be adopted without considerable difficulty, nor without indemnifying those British subjects whose existing rights would be abrogated.

22. In conclusion, in submitting the foregoing observations to Your Grace; which I have done with the freedom necessary for Your Grace's information; I am sensible that I have not suggested what is in consonance with *all* the views expressed in the letter of the Under Secretary of State of the Department of Foreign Affairs to the Under Secretary of State of the Colonial Department, accompanying Your Grace's Despatch to myself. But it has been my duty frankly to state to Your Grace the public sentiment here, as well as my own views and opinions, upon the points to which my attention has been called. A review of the whole of the facts of the case will show, that if the merits of the causes of complaint on both sides are fairly weighed, the French are in the enjoyment of privileges which are not supported by the terms of the Treaties; that, in reality, it is British subjects, and not the French, who have ground to complain of the infraction of the Treaties; and, that the duty of reciprocal respect on the part of the French for the terms of the Treaties, some of the provisions of which concede to them privileges, in fact, detriment to the principle of the Sovereignty of the Territory of this Colony, needs to be insisted upon. The recent, and I believe, I may add premeditated, act of aggression on the part of the French at St. George's Bay to which I called Your Grace's attention in my Despatch No. 60 of the 3rd instant, will, as it appears to me, impose on Her Majesty's Government the necessity of declaring once more the inadmissibility of the French claim to an exclusive Fishery, as the Treaties now stand. The principle involved in such a remonstrance will apply within the entire district assigned for the French Fishery. Consequently a revision of the subsisting engagements between England and France, on the basis suggested in the 18th, and referred to at the commencement of the preceding paragraph of this Despatch, will include a concession of solid advantage to the French—a concession indeed which, in the opinion of the Council and the Colony, is too large. But our scrupulousness in abstaining for a series of years from exercising on parts of the Coast rights from which we are not debarred by Treaty, in order that the French might by this means have the more beneficial enjoyment of their privileges, cannot in reason be urged as an argument why we should make still further concessions.

I have, etc.,

(Signed)

KER B. HAMILTON.

His Grace the DUKE OF NEWCASTLE, etc., etc., etc.

P. S.—I append a copy of a Document and Sketch, remaining in the Government Office, relative to the boundary between the British

and French Fishery limits, on the East Coast of Newfoundland, agreed upon by Captain Darley, of H. M. S. *Electra*, and Captain Le Fabvre, in 1843, referred to in Article No. 10, of "separate paper," by Messrs. Archibald and Strachey.

CAPE ST. JOHN.

The French have kept clear of our fishing grounds to the Southward of Cape St. John this year; indeed, they have had no temptation to exceed their own limits, from the abundance of fish which has appeared on them; there is a slight difference of opinion as to the exact position of the Cape; the headland forms itself into three points, as shown in the annexed sketch;—N, forming the North—M. the middle, and S. the South Points; G. is Gull Island, and R. Bishop's Rock, lying to the eastward of the Cape about a mile distant. Captain Le Fabvre, the Senior Officer of the French Squadron, has endeavored to settle the question, and to his arrangement, I should think, no reasonable objection can be made. He fixed Cape St. John at M, and drawing a line from M to R, he makes that the French boundary; accordingly he has given strict injunctions to the French fishermen not to pass to the Southward of it.

(Signed) A. DARLEY,
1843.

(Here follows the Sketch above referred to.)

Despatch from His Excellency the Governor accompanying [Report] from the Law Officers of the Crown on the subject of the Laws relating to the Fisheries of Newfoundland.

[Extract.]

No. 60.]

GOVERNMENT HOUSE,
St. John's, 29th September, 1855.

SIR: I have the honor to transmit herewith a copy of the Report from the Law Officers of the Crown, which has been furnished in fulfilment of the instructions conveyed by your despatch of the 3d ulto., No. 6, and which I shall take care to communicate to the British Minister at Washington, with whom I have already been in correspondence on the subject to which it relates.

2. You will perceive by this Report, which is entirely accordant with that of the late Attorney General, Mr. Archibald, dated July 5th, 1853, copy of which was transmitted with my predecessor's despatch, No. 46, July 12th, 1853, that there are in fact no Laws or regulations whatever relating to the Fisheries, practically in force in this Colony.

3. With respect to the law which is still on the statute book for imposing a duty upon herrings and caplin, exported in such a state as to make them available for bait, I have already the honor of submitting my views, in my despatch No. 26, of the 8th July last.

I have, &c.,

(Signed) C. H. DARLING.

The Right Honorable Sir W. MOLESWORTH, Bart.

[Enclosure in No. 60.]

ST. JOHN'S NEWFOUNDLAND, *September 17th, 1855.*

SIR: In reply to your communication transmitting a copy of a Despatch from the Right Honorable the Secretary of State for the Colonies to His Excellency the Governor, dated the 23rd of August last, requesting him to forward to the British Minister at Washington, authentic copies of all the laws and regulations of the Legislature, or other competent authority of Newfoundland, on the subject of the Fisheries of this Island, we have the honor to report, in compliance with the desire of his Excellency, that, apart from the common law of England, which is in operation here, so far as it is applicable to the circumstances of the Colony, and the several Treaties defining the relative rights of England, France, and the United States of America to the fisheries of this Colony, there are no special enactments of the Local Legislature in operation here for the regulation of the fisheries.

2. In relation to the export of fish, certain duties are made payable by the local Act 8 Vic., Cap. 5, upon the exportation of fish. Salted or pickled herrings or caplin, if exported in bulk, 3s. per cwt., and upon salted and pickled caplin, if exported in barrels, 2s. 6d. per barrel. This Act, which was passed to check the traffic in bait with the French, was amended as to the exportation of herrings to any part of the British dominions, by permitting the master of every vessel exporting herring in bulk to give bond for the amount of the duties, which bond shall be cancelled upon the production, within one year of the date of it, of a certificate from a duly qualified person at the port of discharge, that such herrings had been landed within the British dominions. This Act having been found insufficient to prevent the evil which it was passed to correct, has not been enforced for some years past and is now quite inoperative.

Supposing it to be in any way inconsistent with the Treaty for the establishment of Free Trade with the United States of America, it must be regarded as suspended, so far as general words can do so, with reference to the citizens of that country pursuing the fisheries on our coasts under the Treaty; for the local Act 18 & 19 Vic., Cap. 2, being an Act to give effect on the part of this Island to the Treaty for the establishment of Reciprocal Free Trade with the United States, suspends all the laws of this island which are contrary to, or inconsistent with, the spirit of the Treaty.

(Signed) P. F. LITTLE,
H. M. Acting Attorney General
J. HAYWARD,
H. M. Acting Solicitor General.

The Honorable the COLONIAL SECRETARY.

Mr. Labouchere to Governor Darling.

No. 4.]

DOWNING STREET, 16th January, 1857.

Governor DARLING.

SIR: With reference to former correspondence on the questions so long pending between the British and French Governments respecting the Fisheries of Newfoundland, I have now to transmit to you the copy of a Convention^[a] signed on the 14th of this month, and the ratifications of which have been this day exchanged. I could have wished that Her Majesty's Government had had the assistance, as was at one time expected, of one of your principal advisers in conducting this negotiation, but I believe that the views of the Government and people of Newfoundland have been so fully placed before this department by the Despatches and accompanying Documents of yourself and your predecessors, that nothing was wanting to complete the necessary information on this head; and the presence of a gentleman specially entrusted by the French Government with the conduct of the business, rendered it desirable to arrive, if possible, at an understanding without further delay.

You are, as well as your advisers, so thoroughly versed in the history of this long agitated subject, that the several provisions of the Convention will be readily understood by you, without any minute explanation on my part. The detail into which I propose to enter is therefore rather with a view to point out the leading principles which have governed Her Majesty's Government in this transaction, than merely to remind you of well known facts. The French rights on the coast of Newfoundland, under the former Treaties, were the following:

The exercise, during the summer season, of a right of fishery from Cape Ray on the Southwest, round the Northern point of the Island, to Cape St. John, on the North-east, comprising therefore, about half the coast of the Island.

And the Crown was bound to take the most positive measures for preventing its subjects from interrupting in any manner by their competition (concurrence) the fishery of the French during such temporary exercise. For this purpose the Crown was bound to remove all fixed settlements from the shore.

I will not now recapitulate the discussions which have taken place at various times, as to whether this grant of fishery rights was "exclusive" as contended by France, or "concurrent" only as contended by ourselves. Suffice it for the present to say, that the conclusion drawn by yourself in the "Remarks" appended to your Despatch of the 23rd July last, is substantially that at which impartial investigation could scarcely fail to arrive. Whether the terms conveying the French right were logically equivalent or not to the term "exclusive" they were at all events practically so; since English fishermen could not interrupt French fishermen by "competition" it was of little importance whether they had in theory "a concurrent" right, since they would always be warned off by the French.

In point of fact, it appears that the result corresponded to this view. Under the treaties and the declaration of 1783, the particular

[^a For text of Convention, see Appendix to U. S. Case, Vol. I, p. 58.]

stipulations (which I have not thought it necessary to cite) respecting the cutting of wood, etc., and the proclamations by which the British Government sought from time to time to carry the treaties into effect, the French enjoyed an exclusive fishery along the so-called "French Shore", and also the exclusive use of that Shore, for fishing purposes, during their season, and they insisted on the legal right to prevent the settlement of Her Majesty's subjects and the erection of fixed establishments on any part of that shore.

It would no doubt have been more satisfactory to Her Majesty's Government, as well as to the inhabitants of Newfoundland, if the French could have been induced to waive rights exclusive and likely to be in some respects so inconvenient.—But during the many years over which these negotiations have spread, no opportunity has offered itself of attaining in this manner the desired object. The French Government is not disposed to part with or compromise rights under which a branch of industry, to which it attached considerable value, has grown up.—And, in the meantime, not only was great expense entailed on both Governments, by the necessity of maintaining Naval Forces to prevent mutual encroachments, but these encroachments could not always be prevented, and the peaceful relations of the two countries have been frequently in danger of interruption from disputes which there was little hope of terminating by decision or intervention, since the very indefinite nature of the rights claimed or enjoyed by France in British soil and waters rendered their constant repetition almost inevitable.

Under these circumstances, Her Majesty's Government had no alternative except that of endeavoring by negotiation to diminish the chances of collision by defining the disputed points; and at the same time to obtain from France such concessions as were most likely to prove permanently serviceable to the interests of Newfoundland at the price of such concessions on our side as were least likely to be felt as onerous.

The Concessions made by France in the Convention now forwarded are as follows:

The "exclusive" right of France to the Fishery is limited entirely to the Northern extremity and North Eastern Coast of Newfoundland from Cape Norman to Cape St. John, including the portion of the "French Shore" at present chiefly used by the fishermen of that nation, and to five reserved points on the Western Shore to which the French attach a value on account of existing establishments and rights there.

The waters of the entire Western Coast with these exceptions, are therefore left open to the free concurrence of British fishermen; a Concession which it is hoped will be of increasing importance as population and industry advance.

Along the little tract of shore between Quirpon Islands and Cape Norman shore, and also at the five reserved points, the French rights of fishery are described as "to the exclusion" of "British subjects". This phrase requires explanation. It need scarcely be said Her Majesty's Government could entertain no idea of ceding to any Foreign Nation special rights to the exclusion of her own subjects in particular, even on points of such minute geographical importance as these. No such consequences follow here. But the phraseology was rendered unavoidable by the peculiar position in which this country was placed

by former negotiations. In 1818 the British Government concluded the convention of October 20th of that year with the United States, in which it is, among other things stipulated, that the inhabitants of the United States, shall have liberty to take fish "in common with the subjects of His Britannic Majesty" on the western and northern coast of Newfoundland, from Cape Ray to the Quirpon Islands.—Now on the assumption that the French right on that coast is exclusive (which, as has been said, must be practically the case) the Americans could acquire no right, under this convention of 1818, during the period of the year occupied by the French fishery, and it is believed that in point of fact no claim to interfere with the French has ever been sustained by Americans; nevertheless Her Majesty's Government are of opinion, in order to preserve consistency with the language of the convention of 1818, it was necessary to declare the French right on points between Cape Ray and the Quirpons to be exclusive "against British subjects", in order to leave no semblance of interference with nominal (although not in fact exerciseable) rights on the part of the United States. It is very unnecessary to do more than refer you to the more recent fishing treaty with the United States of 1854, as it does not appear to affect the question now before us.

France also abandons her right to the use of the shore, leaving it exclusively in British occupation, from the South Western point of the Island at Cape Ray to the point known as "Rock Point" in the Bay of Islands, North of the River Humber, with the exception of such of the five "reserved harbors" as lie within this part of the Coast. To this point Her Majesty's Government attached particular importance, not so much on account of the immediate value of the concession, as with a view to the future advancement of Newfoundland. They had learnt from various sources that the shores of the Bay of St. George appeared to furnish by far the most profitable field for future Colonization which the Island affords, and were singularly exempt from the disadvantages of climate which have unavoidably retarded agriculture in the South and South East of the Island. They felt therefore that it was a very serious evil that the French Shore rights, intended only for the protection of their fishery, had the effect of rendering all settlement of this Coast illegal; that the subjects of Her Majesty, who, notwithstanding existing prohibitions, had established themselves on it, had but imperfect legal protection for their industry or security for their property—they believe that by this concession on the part of France, the whole of the Coast which civilization is likely to reach for many years will be rescued from its present subjection to French Shore rights and rendered available for the increasing population of the Island.

The Concessions on the part of Her Majesty's Government (as regards Newfoundland) are simply the following:

That the traffic in Bait on the South Coast shall be rendered legal. From all the information which has reached this Department, that traffic is already unimpeded in point of fact, and I believe I may add, that whatever assistance it may afford the French in the prosecution of their fisheries, the subjects of Her Majesty who find employment in thus supplying them would greatly regret the strict enforcement of the existing legal restrictions on this traffic.

The French Government have acquired, and Her Majesty's Government have conceded, a contingent right to supply themselves with this article, so indispensable for their purpose, if the supply by purchase should fail. But you will perceive that it depends on the British suppliers of bait, whether this article shall ever come into force or not, and that it cannot do so without the sanction of the British Naval Officer on the station, whose duty would of course be to communicate with the Government of Newfoundland on such a demand being made by France.

Her Majesty's Government have also acquiesced in the solution favorable to France, of the disputed question respecting the Island of South Belle Isle and Groais.

It will be remembered that although these Islands lie within the waters generally considered as belonging to the French fishery, yet doubts were entertained whether the shore rights of France extended to them, and the Law Advisers of your Government were at one time of opinion that the English settlement could not be lawfully prevented on these Islands, although none, as I am informed, at present exists.

These special articles comprise (it is believed) all the advantages now conceded to France, in respect of the coasts and waters of Newfoundland properly so called. But Her Majesty's Government are willing to purchase the benefit above mentioned for Newfoundland by a concession elsewhere of greater importance, and to which France attached considerably greater value, namely: That of a concurrent right of fishing along about 80 miles on the coast of Labrador (in the Straits of Belle Isle) but without use of the shore; and similar rights on the coast of North Belle Isle with use (but not exclusive) of the shore.

The remaining stipulations of the Treaty, may as I believe, be classed not as concessions or alterations of existing rights, but as an endeavor to put into as definite a shape as the subject admitted, the right which usage, founded on the above mentioned Treaties and Proclamations, as already sanctioned. It would have afforded greater satisfaction to Her Majesty's Government, as well as no doubt to the inhabitants of Newfoundland engaged in the fisheries, if the settlement of these questions had been accompanied by an abandonment on the part of France of her system of Fishery Bounties in that quarter. But this is a point in which Great Britain cannot enforce by negotiation its own views on a state in the position of France, possessing already under former Treaties such extensive rights on the coast of your Government. It would not have been politic for this country to make any absolute and irrevocable concession in order to obtain the abolition of a protective system which might be indirectly re-established without its being possible to prove a breach of engagement.

It is most assuredly the belief of Her Majesty's Government that the fundamental impolicy of regulations of this class is becoming daily more and more apparent in France and elsewhere, and that in the ordinary course of events the industry of Newfoundland, and of Great Britain, will not long have to sustain the unequal competition, although less unequal in reality than appearances, which they must at present encounter from that of France.

Such are the outlines of the Treaty which I now transmit to you. Deeply anxious as they are to effect the settlement of questions so complicated and so pregnant with possible mischief to both countries, Her Majesty's Government have nevertheless not thought themselves justified in departing from that rule of Colonial Government which is now so firmly established in British North America. They have thought that in regard to matters affecting the soil and the population of Newfoundland, the concurrence of the Legislature of Newfoundland itself should be sought before any Treaty stipulations could be put into execution, and that the aid of Parliament (notwithstanding its paramount constitutional power in questions of Treaty, affecting as these do directly or indirectly, the Empire at large) ought, except in an extreme case, to be reserved for the purpose of completing whatever the Local Legislature may not have strict legal power to effect.

You are therefore instructed to submit this Treaty to the Legislature of Newfoundland for the enactment of the necessary laws. Your own legal advisers will be better enabled to inform you than myself, what laws may be strictly required; but it would appear that all local restrictions on the sale of bait in the specified localities should be removed, and that force of law should be given to those provisions of the treaty, at all events, which relate to the use of the shore in Newfoundland, and authorize the removal of settlements and erections, and those which confer powers on Commissioners. Probably the simplest course would be to recite the Treaty in a single Act and give it force of law in the Island as far as this is needed: But this I notice by way of suggestion only. You will observe lastly, that although Her Majesty's Government have expressly submitted the Treaty to the assent of the Newfoundland Legislature, they have for their part promised to use their best endeavors to procure the passing of the necessary Laws. They are most desirous that these words should be taken as expressing their strong anxiety to effect this arrangement, and their conviction that to miss this opportunity of coming to a settlement, will be to cause great inconvenience and probable future loss to Newfoundland. For there can be no doubt that the final failure of a negotiation so long continued will tend to encourage both parties to resort to the full exercise of their existing rights. When the expectation of ultimate agreement upon disputed points is at an end, there will, it must be feared, be little encouragement left for compromise or mutual forbearance.

You are yourself the judge how seriously the mutual enforcement of the powers which each Nation now claims, as against the other, would be felt by various interests in Newfoundland.

Should the necessary laws be passed by the Legislature of Newfoundland in its approaching Session, there will be time to bring the subject under the notice of Parliament for the purpose of removing any difficulties arising on former Imperial Statutes.

I have, etc.,

(Signed)

H. LABOUCHERE.

Governor DARLING, etc., etc., etc.

Newfoundland.

*Extracts from the Journals of the Legislative Assembly of Newfoundland, 1859.**Lord Cowley to Count Walewski.*

PARIS, December 13th, 1858

M. LE MINISTRE: Your Excellency is aware of the anxiety which successive administrations of the Queen have for a long time felt, to effect a final settlement, with the French Government, of all questions relating to the Newfoundland Fisheries.

The last attempt was rendered abortive by the exercise by the Newfoundland Legislature of the privileges reserved to it by the XXth Art. of the Convention signed in London on the 14th January, 1857, by which the execution of the provisions of the Convention was rendered dependent on the concurrence of the Colonial Legislature.

The whole arrangement then fell to the ground, and the two Governments were replaced, as regards the question, in the same position as that which they occupied previously to its conclusion, and the efforts which have since been made to come to an understanding on the subject, have not been attended with success.

Under the circumstances Her Majesty's Government, though still anxious for a settlement which might be satisfactory to all parties, and, always on the watch for any opportunity to bring it about, were prepared to leave matters as they have been for many years past, trusting that by mutual forbearance, both Governments might be able to avert the concurrence of events which might produce discussion between them.

It appears, however, by the reports which have lately reached H. M. Government, that the Commander-in-Chief of the French Naval Forces employed in the protection of the French Fisheries in that quarter has formally notified that from the commencement of the ensuing season, namely the 5th May next, the French cruisers will vigorously enforce as against British subjects the rights secured to France by existing Treaties, and specifically as regards the exclusive right of fishery claimed by France.

Now, Her Majesty's Government are free to admit that although the Treaties do not in terms confer upon France any exclusive right of fishery, and Her Majesty's Government must continue to deny any claim to that effect, yet, that the operations of French fishermen may have been unduly interfered with by the competition of British fishermen, and perhaps by that of the inhabitants of Newfoundland. On the other hand Her Majesty's Government have reason to believe that French subjects have encroached beyond the limits assigned to them by Treaty.

The Imperial Government will readily admit that if the observance of Treaties is binding on one party, it is equally obligatory upon the other, and they will not be surprised that Her Majesty's Government, in accepting, as they are bound to do, the notice given by the French Naval Commander, that the Treaty Rights of France will be enforced from the 5th May next against British subjects, give, on their part, a counter notice that, from the same date, French subjects will be required strictly to conform themselves to the terms of the Treaties between the two countries.

I am accordingly instructed to give this notice to your Excellency, but I am, at the same time, to observe that Her Majesty's Government are not without apprehensions that the enforcement of these notices on either side, without taking steps to ascertain by local enquiry in what respect, and to what extent, the subjects of either Government may have encroached and disregarded the terms of treaties, may lead to much unpleasant discussion, and may be productive of inconvenience and loss to the subjects of both parties, which by a timely understanding might be avoided. It appears to Her Majesty's Government that the interval which must elapse before the Fishery on the Coast of the Island of Newfoundland can be resumed, might with much advantage be employed in ascertaining to what extent the provisions of treaties have been transgressed by either party; when this is ascertained there would probably be no difficulty on the part of the authorities of either country in restricting their respective subjects to a literal observance of the terms of those treaties; and, at all events, no discussion could arise between the two Governments as to any measures which might be taken by their authorities for that purpose, when once the points on which the treaties have not been observed by their respective subjects are ascertained.

And it might turn out that an impartial enquiry on the spot, might suggest the means of a compromise on the matters in dispute, and that the interests of the subjects of both countries might thus be provided for, and all prospect of future collision thereby averted.

If the Government of the Emperor of the French concur in this suggestion, Her Majesty's Government will immediately name one or two Commissioners, as may be agreed on, for the express purpose of ascertaining in conjunction with the like number of Commissioners appointed by the Imperial Government, in what respect, and to what extent, the subjects of the respective nations upon the coast of Newfoundland, are in the habit of disregarding the provisions of the Treaties by which, within certain limits, the fishery upon those coasts is secured to French subjects.

I have, &c., &c.,

COWLEY.

To Count WALEWSKI, &c., &c.

Count Walewski to Lord Cowley.

Translation.—Original in French.]

PARIS, 5th January, 1859.

M. LE COMPTE: Your Excellency, in acquainting me, by your letter of the 13th December, with the apprehensions felt by Her Britannic Majesty's Government, with respect to the execution of the instructions destined for the Commandants of the English and French Naval Forces at Newfoundland, expressed to me the desire to ascertain (before the period when they will be put in force),—by an inquiry on the spot, the extent to which the subjects of the respective nations have exceeded their rights.

The difficulties raised by the Newfoundland question, appear to the Emperor's Government to proceed solely from a difference in the interpretation of treaties; and it cannot, therefore, share in the

confidence which H. B. M. Government feels in the results of the proposals which your Excellency has been charged to make to me. The Emperor's Government, however, attaching a great importance to preventing any circumstance which might prove of a nature in the least degree to injure the cordial relations which it is so happy to keep up with the Government of H. B. Majesty, has resolved to consent to it,—and to appoint an officer of the Imperial Navy to take part in an enquiry on the spot. The Minister of Marine, however, has represented that the severity of the season will render all serious investigation, at the present time, impossible,—and that the Commissioners could not collect sufficient information before the season for the fishery, seeing that the presence of the fishermen is indispensable to collecting all the evidence necessary to throw light upon the various details of this question.

Wishing to prove its sincere desire to neglect nothing which may promote the good understanding which it has always so earnestly wished for, the Government of the Emperor is of opinion that it will be better to take these observations into consideration, and to decide that the Commissioners shall meet at Newfoundland in the first days of the month of May next; and, in consequence, I beg of your Excellency to convey the proposal of Her Britannic Majesty's Government.

It will, moreover, be understood that during the ensuing fishing season, and whilst proceeding with a new examination into the real state of affairs,—the Commandants of Stations shall receive orders to carry out their instructions with such toleration (*adoucissements*), as may be deemed necessary to prevent any regrettable occurrence.

We feel gratified in thinking M. l'Ambassadeur, that Her Britannic Majesty's Government will receive our resolutions as a new proof of the amicable and conciliatory sentiments which animate the Emperor's Government. We wait to give effect to them, to know that the Cabinet of London considers them, on its part, as perfectly adapted to the end suggested by the communication which you did me the honor to address to me.

I have, &c., &c., &c.

To His Excellency Lord COWLEY, &c., &c.

Extracts from the Journal of the Legislative Assembly of Nova Scotia, 1861.

MONDAY, February 4, 1861.

Prayers.

Mr. Speaker presented to the House a communication which he had just received from the honorable the Speaker of the House of Assembly of the Colony of New Foundland, which, with the accompanying resolutions, were read to the House, and are as follows, viz:

HOUSE OF ASSEMBLY,
Newfoundland, 29th January, 1861.

SIR: The House of Assembly of this colony have deemed it necessary to adopt the accompanying Resolutions, which embody a protest against a proposal which American Colonies, in the despatch of Mr.

Labouchere to the Governor of this Colony, dated 26th March, 1857, a copy of which was, at the time transmitted to the Legislature of your Province.

Being equally interested with this colony in the maintenance of the rights in question, I forward for the information of your Legislature, a copy of the proceedings this Assembly has adopted on the subject.

I have the honor to be, sir, your obedient servant,

(Signed) A. SHEA, *Speaker*.

[Inclosure.]

[Copy.]

Resolutions adopted by the House of Assembly on the convention in course of negotiations between Great Britain and France on the subject of the Newfoundland Fisheries:

Resolved, That the House has heard, with surprise and alarm, that the convention in course of negotiation between Great Britain and France, on the subject of the Newfoundland Fisheries, is not to be submitted for the assent of the people of this colony.

Resolved, That such a procedure, on the part of her Majesty's Government, would be a violation of the pledge given by Mr. Labouchere, in his despatch dated March 26th, 1857, in which it is declared that the consent of the people of Newfoundland is regarded by her Majesty's Government as the essential preliminary to any modification of their maritime or territorial rights.

Resolved, That this pledge, which has been aptly styled the Colonial Magna Charta, cannot be withdrawn without a breach of faith on the part of the British Government toward all the North American Colonies, and would, necessarily, awaken a strong feeling of indignation in the breasts of those communities of loyal British subjects.

Resolved, That we most firmly and earnestly pray the Imperial Government not to disturb the sacred rights of the Colonists in the matter in question, for, apart from its injustice, we should deeply regret the stain it would inflict on the honor of the Imperial name.

Resolved, That an address, embodying the foregoing Resolutions, be prepared, and forthwith transmitted to her Majesty's Government, and that copies be sent to the Legislatures of Canada, Nova Scotia, New Brunswick, and Prince Edward Island, for their information.

Resolved, That if it should seem necessary, this question should be brought before the House of Commons, in order that no means shall be left untried for the vindication of our rights.

House of Assembly, 29th January, 1861.

Ordered, That the despatch and resolutions do lie on the table, and be printed in the Journals.

[Inclosure.]

APPENDIX No. 26.

The Duke of Newcastle to Sir A. Bannerman.

No. 80.]

DOWNING STREET, 4th March, 1861.

SIR: I have received your despatches Nos. 11 and 12, of the 30th ultimo, inclosing addresses from the House of Assembly of New-

foundland, and from certain members of your Executive Council, respecting a convention for regulating the Newfoundland fisheries which is at present in course of negotiation between the English and French Governments.

You acted rightly in forwarding to me those addresses, and in your statements to the Assembly, you have accurately represented the views of Her Majesty's Government.

It is plain that the responsibility of securing to French fishermen the free exercise of every right guaranteed to them by existing treaties, rests on the British Government which made those treaties. This obligation they cannot transfer to the colony of Newfoundland, but are bound themselves to discharge frankly and effectually.

Subject to that obligation Her Majesty's Government are most anxious, not only to protect and advance the interests of Newfoundland, but in all local questions to ascertain, and as far as possible, defer to the wishes of the colonists.

The convention now proposed, has not for its object in any way to enlarge the maritime or territorial rights of France, or to abridge those of Newfoundland, but primarily and almost exclusively to provide a machinery capable of securing that the just rights of each party under the existing treaties, shall be respected by the other.

The comparatively unimportant clauses of the convention which have not this object, contain provisions which will confer material advantages on some of the inhabitants of Newfoundland, and embrace nothing which in the opinion of Her Majesty's Government, falls within the spirit of Mr. Labouchere's promise, which was not lost sight of by them throughout the protracted negotiations with the French Government.

I make these observations to prevent misconception. But, I do not anticipate that the provisions of the convention will be considered by the community of Newfoundland any more than they are by Her Majesty's Government, either as injurious to their interests, or as involving such modification of their rights as was contemplated in Mr. Labouchere's despatch.

I regret much that it is not in my power at once to authorize you to communicate a copy of that convention to the Government and Legislature of the colony.

I have, &c.

(Signed)

NEWCASTLE.

Governor Sir A. BANNERMAN, &c., &c., &c.

Message of His Excellency the Governor to the House of Assembly.

A. BANNERMAN, *Governor.*

The Governor has received an address from the House of Assembly, requesting that he will "cause to be laid before the House copies of all correspondence with her Majesty's government on the subject of French claims of fishing on the Newfoundland coast."

The Governor has to inform the House of Assembly that he never had any correspondence with her Majesty's government on the subject of "French claims of fishing on the Newfoundland coast."

In the year 1858, when the Baron de la Ronciere le Neury made a claim for an *exclusive* right to fish in St. George's Bay, and gave notice to our fishermen accordingly, the Baron had no communication with the Governor on the subject of French claims, or anything else; but not long afterwards an official notification was made to her Majesty's government that "in the following season, namely the 5th May, the French cruisers would vigorously enforce against British subjects, the right secured to France by existing treaties, and specifically as regards the exclusive right of fishery as claimed by France.

The British government immediately gave on their part a counter-notice, that from the same date, "French subjects would be required strictly to conform themselves to the terms of the treaties between the two countries."

The important despatches which the Governor received on this subject, were laid before the House of Assembly, immediately on his receiving them early in the year 1859;—they will be found in the Appendix to the Journal of the Assembly for the same year, page 402 to 408,—to which the Governor begs to refer the House, for, it appears perfectly manifest to the governor, on reading the despatches alluded to and others which accompanied them, that under such circumstances, when disputes arise, and claims are made by one party and not admitted by the other, her Majesty's government adopted a wise course in agreeing to a Joint Commission with France to appoint two English, along with two French Commissioners, to acquire information and report the same to their respective governments in order that if the disputes have arisen from difference interpretations put on these treaties by France and England—the two nations may be enabled clearly to define the rights and privileges which belong to their respective subjects, and thus terminate those disputes which have frequently taken place between English and French fishermen, the Governor believes, for a century past, on the coast of Newfoundland.

The Governor having published the communication made to him verbally by His Grace the Duke of Newcastle, on his late visit to this colony, and laid before the House a short despatch of date the 11th September last,—he can give the House no further information, although he thinks many days cannot elapse, when he will be fully informed on a subject of such importance to the Colony.

The Governor avails himself of this opportunity of repeating his individual opinion, which he has frequently expressed before, that France never had, and has not the exclusive right of Fishery, which has been claimed, and further, the Governor believes that the maritime and territorial rights of Newfoundland, under existing treaties will be preserved; and it has been a source of satisfaction to him that pending negotiations between the two nations during the last two years, the English and French fishermen have been pursuing their avocations so quietly, at least no complaint whatever has been made by Her Majesty's subjects except one from the West Coast, against a French Naval officer, which, on investigation, was found perfectly frivolous.

Government House, 4th February, 1861.

Extracts from Canadian Sessional Papers, Vol. IV, 1869.

Mr. Campbell to the Canadian Minister of Marine and Fisheries.

GUYSBOROUGH, N. S., *February 2nd, 1869.*

Hon. P. MITCHELL,
Minister of Marine and Fisheries.

SIR: With reference to your communication of the 16th September last, on the subject of the operation of the license system policy embodied in and intended to be enforced by the provisions of the Act for the regulation of fishing and protection of the fisheries, and the Act respecting fishing by foreign vessels, and also in relation to the fishing trade and business generally, I have the honor to inform you that in accordance with your instructions conveyed to me by that communication, I visited the Island of Prince Edward, and the other localities affected by the subject in the months of October and November last, and I now beg to report the following observations bearing upon the general question. I regret that in doing so, I shall not be able to reply seriatim to the several enquiries propounded by you. The difficulty or rather the impossibility of obtaining in the Island the required information, will I hope be regarded as sufficient apology for such deficiency, and the probably less satisfactory shape which this communication will consequently assume. I trust however that even in its present form, it will not be without some value.

The principal source of inconvenience and grievance on the part of the British traders and subjects generally in the Maritime Provinces, who are connected with the fisheries is to be found in the great change of circumstances brought about by the abrogation of the Reciprocity Treaty. During the existence of that Treaty, the entire freedom with which that branch of industry, represented by the fisheries, was pursued on the part of the subjects of the United States of America on the coasts of the British Provinces, naturally brought these foreigners into most intimate business relations with merchants, traders, and others in many localities of the maritime portion of the Dominion, and especially at and in the vicinity of the Strait of Canso. The great body of the large fleet of American fishermen, numbering several hundred vessels, which annually passed through that Strait to the Gulf of the St. Lawrence in the prosecution of the fisheries, and especially the Mackerel fishery, was invariably in the habit of procuring much of the requisite supplies for the voyage at the several ports in that Strait. The business thus created largely benefited not only those directly engaged in commercial pursuits, but was also of immense advantage to other classes of the inhabitants of several of the adjacent counties of Nova Scotia. The constant demand for, and ready disposal at remunerative prices to the American fishing vessels, of a large quantity of farm produce, and other products of industry in the shape of barrels, hoops, lumber, wood, &c, was at once the character and result of the intercourse which subsisted during the existence of the Reciprocity Treaty. The total exemption from duty of all fish exported from the Maritime Provinces to the markets of the United States was also a boon of inestimable value to the very large class of British subjects directly

and indirectly connected with our fisheries and its resulting trade. This state of things, which was beneficial also in no small degree to the subjects of the United States, undoubtedly created a condition of general prosperity and contentment among the classes of British subjects referred to, such as had never previously existed.

On the termination of the Reciprocity Treaty in 1866, by the Act of the government of the United States, both parties, viz: the subjects of Great Britain and those of the United States were remitted to their respective former status under the terms and provisions of the London Convention of October 20th, 1818, and the several Colonial enactments based on, and in accordance therewith, supplemented by such exceptional rights in favor of foreign fishing vessels as the license system or policy has created and conferred. To that status I beg now to advert. And first with regard to the rights of American fishermen under the convention of 1818, although no small amount of official correspondence and even controversy between Great Britain and the United States has taken place on this subject, particularly previous to the Treaty of Washington, 1854, commonly known as the Reciprocity Treaty, the right of American fishermen to participate in the fisheries on the coasts of British North America are very clearly defined by the latter part of the first article of the Convention of 1818: "And the United States hereby renounce forever any "liberty" heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's Dominion in America, not included within the above mentioned limits." (The limits here referred to are specified in the same article, and have no application to the matter in hand) "provided however that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. "But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or, in any other manner whatever abusing the privileges hereby reserved to them."

Notwithstanding the just and indisputable construction of the terms of this article by Her Majesty's Government, to the effect that the Government of the United States have thereby renounced the right of fishing not only within three miles of the Colonial shores, but also within three miles of a line drawn across the mouth of any British bay or creek, and although Her Majesty's Government is advised that American vessels engaged in fishing, might be lawfully excluded from navigating the Strait of Canso, yet as I apprehend, it is not the desire of Her Majesty's Government, or of the Government of this Dominion, to either waive or enforce the more extensive but legal construction of the article already cited in the foregoing respects, the policy of granting American subjects the liberty to fish within three miles of the Colonial shores, and the conditions upon which such liberty is to be permitted, became, on this branch of the subject, questions of very serious moment, and entitled to very serious and mature consideration. Upon the first of these points, I think I may assume that both the Imperial and Dominion authorities, entertain no other idea than that of insisting, under any circumstances, upon the absolute right to exclude American fishermen from any free participation in the inshore fisheries. Any other policy would, I

conceive, under existing circumstances be unjust and suicidal, particularly in view of the impositions of the United States Government upon British caught fish, and would certainly eventuate in general dissatisfaction of the most aggravated kind. I trust therefore that it is unnecessary to dwell upon this point. Upon the second, viz: The conditions upon which, if permitted, the liberty to fish is to be enjoyed by the subjects of the United States, difference of opinion may no doubt exist, and the character and form of those conditions are of course subject to question. The experience of the past may, in this particular as in others, be a guide for the present. I shall therefore examine the operation of the license system during the last three years, and present the results. In 1866, the tonnage duty under that system was 50 cents per ton. In 1867 was \$1.00 per ton, and in 1868, \$2.00 per ton. In 1866 about eight hundred vessels were engaged in the fisheries of the Gulf and River St. Lawrence, of which number 454 took out licenses, the aggregate amount of tonnage dues paid by them being \$13,016.85. In Nova Scotia there were 354 licenses issued, the collections on which amounted to \$9,368.50. In Prince Edward Island 89 licenses were taken out, and dues paid to the amount of \$3,339.35. Only 10 licenses were taken out in the late Province of Canada, the payment on which was \$296. But one was issued in New Brunswick, yielding \$13, and none were granted in Newfoundland.

In 1867, in Canada and New Brunswick no licenses were issued. In Nova Scotia the whole number issued was 269. The amount received therefor was \$13,929. This amount is proportionately greater in consequence of the double rate or \$1 per ton as against 50 cts. per ton in the previous year. The actual diminution in the number of licenses may be regarded as owing in some measure to the practice of giving three warnings to intruders, before enforcing acceptance of license, or making seizure.

In 1868, 49 American fishermen took out licenses in Nova Scotia, the tonnage dues on which at \$2, per ton amounted to \$4,691.50. The diminution in this year of the number of licenses accepted, is attributed to the high rate of tonnage duty. From personal observation and enquiry I am disposed to charge it to another but additional reason, and that is the exemption from all restrictions practically enjoyed by American fishing vessels at the several ports and on the shores of Prince Edward Island. In this connexion I would submit the very strange and startling fact that only five or six licenses were issued by the Island authorities in the past year. Free fishing upon grounds within the most liberal interpretation of the phrase "prohibited limits" was the rule and not the exception. This unquestionably passive toleration on the part of the Island authorities is certainly quite inconsistent with the arrangements entered into with regard to the mutual adoption of the license system and the exaction of a similar rate of tonnage dues between the Government of the Island, and that of Canada.

On the assumption that the policy of exacting tonnage dues from the American fishermen for the privilege of fishing in British waters, will be continued for the present, the question naturally presents itself, at what amount such exaction should be placed. The statistics of the last three years shew a decided diminution in the acceptance of licenses by the Americans in proportion to the increase

of duty payable thereon; and I am strongly of opinion that henceforth it will be extremely difficult, if not impossible, to induce them to accept licenses, unless the dues be placed at the lowest rate yet exacted. I derive this view from personal intercourse with many of the parties concerned; and even in their submission to that rate, I might be disappointed if the authorities of Prince Edward Island continue practically to encourage the refusal to take licenses from the authorities of the Dominion, by permitting on the shores, within the jurisdiction of that Island, the free fishing to which I have already adverted. There is, I am aware, a considerable class of persons, who advocate a continuance of the present high, or even a higher rate of duty as the condition of license. But it must be borne in mind that in the present state of this question a high rate of duty means efficient protection and its accompanying expense. Without that efficient protection, licenses at any rate, exceeding a nominal amount, and I consider 50 cents per ton to be an amount of that character, will not be accepted. And this brings me to the consideration of the nature and character of such protection. I would be the last man to utter a word or write a line that could be construed as a matter of reproach towards the Imperial naval authorities, in respect of their services on this point, but the facts of this case compel me to say that I cannot regard with favor the present system of the protection of the fisheries. The inefficiency of the protection now afforded may be attributed to two causes. In the first place, Her Majesty's ships are sent on this service at too late a period in the fishing season. It is during the months preceding the fall of the year that their presence on the fishing grounds is most required. Later in the season the fish resort to deeper water, and are to be found outside of the prohibited limits. Protection therefore is not then necessary. As an illustration of the habits of the fish, as well as of the necessity of the vessels engaged in the protection of the fisheries being on the ground at an earlier period, I may mention that I was credibly informed, when at Georgetown, Prince Edward Island, by an eye witness of the fact, that in the month of August last an entire fleet of about 100 sail of American fishermen had actually and very successfully fished for several days, without interruption, in the land-wash near Rustico, on the North side of the Island, of course to the great insult and detriment of British subjects residing there. I was also given to understand that Her Majesty's ships Niger and Barracoutta, detailed as the protective force during the last season, did not reach the shores of Cape Breton and Prince Edward Island until the beginning of the month of October. In the second place, the vessels ordinarily employed on this service are of considerable size and being steamers, their approach is readily discerned by actual intruders and thus time is afforded for escape. It is a remarkable fact that not a single seizure has been made during the season.

The conclusions suggested by the foregoing state of facts are very intelligible. If the present high or any higher rate of tonnage dues is to be continued, and in view of the hostility which such exactions will undoubtedly induce, the water police to be provided, must be of corresponding power of control, and perfect good faith, material aid and activity on the part of the authorities of Prince Edward Island must be demanded. As I have already intimated, the force now provided seems of a character ill-calculated to answer the purpose for

which it is designed. Upon a careful consideration of the subject, and having conferred with many persons whose opinions are entitled to weight, I am led to entertain the opinion that the aid of H. M. ships of the class now used might to some extent be dispensed with. A single vessel of war discreetly stationed in the vicinity of the principal fishing grounds, say alternately at Port Hood, Cape Breton, and George Town, Prince Edward Island, and perhaps an additional port to the northward of the Island, from the first of July to the tenth of November, would be sufficient, if in connexion with her and subject to proper communication with her Commander, four or five fast-sailing schooners of similar size and appearance to the ordinary class of American fishing vessels, with a commissioned officer, and sufficient crew, and duly armed, were appointed to cruise during the above mentioned period within the points embracing the fishery rights of the Dominion. The expense of such a force is easy of ascertainment, and it would no doubt be considerable. This however would be met to some fair extent by the revenue from dues, and possibly by a share of seizures. This suggestion is predicated upon the exaction of what may be termed a high rate of tonnage dues. If on the other hand the nominal rate of 50 cents per ton as hereinbefore stated, and which is more as an explicit acknowledgment of our right than as an equivalent for the privileges conceded, be sanctioned, I feel well assured that although the revenue derived would be of smaller amount, yet the force necessary to ensure its collection might be of a very inferior, and consequently less expensive description, while the national bitterness which this question is daily engendering, would be largely averted.

And here I may offer some observations as to what in my judgment would be the probable effects of dealing with the American fishermen in the more liberal spirit of cheap licenses. In a former part of this communication I have referred to the active and advantageous business relations subsisting between them and the merchants traders, and others, in the Eastern Counties of Nova Scotia, and particularly at the Strait of Canso, during the existence of the Reciprocity Treaty, and pointed out the very prosperous condition of our own people during that period. Much depression has prevailed since its abrogation, caused principally by the exaction of a higher rate of tonnage dues, which has induced the Americans to transfer their former business relations to Prince Edward Island, where the terms of the Convention of 1818 are practically permitted to be unrecognized. The suggestion I have offered with regard to the imposition of a nominal duty of 50 cents, seems to me if adopted as well calculated to restore to the sections of Nova Scotia referred to, much of their former prosperity and consequent contentment. I firmly believe that licenses at that rate will be generally if not universally accepted. The liberty to use our ports as a consequence of such acceptance of licenses will be again embraced. The transfer of their trade to Prince Edward Island will be checked, if not abandoned. The Americans will use the more convenient ports of the Strait of Canso. Their cargoes will be landed and stored there, while if they desire to ship the same to their own home markets, facility to do so by steamers which pass through the Strait of Canso weekly will be at hand. And I feel convinced that a marked improvement in our trade and business generally would be the immediate result.

There is another branch of the general subject on which I take the opportunity to remark, and that is the probability of a large amount of American caught fish being forwarded as British caught fish to Ports in the United States by steamboats trading from British Ports and particularly from Ports in Prince Edward Island. There is an obvious difficulty in obtaining accurate information on this point. The records of the Custom Houses in the United States would be the only means of arriving at just conclusions in the matter. I may however, give an extract of a letter received from a merchant of standing residing at St. John, N. B., which throws some light upon the state of the case. It is dated 4th December, 1868. The writer says, "I fear the Bostonians are doing a large illicit trade in British caught mackerel in Prince Edward Island. There have been large quantities passing through here this season, principally Prince Edward Island brand. I learn that they are forwarded by an American, who is carrying on a shore fishery at the Island in small boats, and in addition, buys all he can get, and is allowed by the authorities at Washington, to enter his fish as American caught, he being an American citizen. The shipments have been from 200 to 300 barrels by each boat semi-weekly since I came here, up to last week, and as I am told, was going on for some time before. I presume they will amount in the aggregate to some 4,000 or 5,000 barrels for the season by this route. They arrive here by railway from the Shediac, and likely the same parties are shipping by the Charlottetown, Halifax and Boston line also. This may lessen your Bay fares, as many of that catch may be purchased by them, and entered free of duty at Boston."

The foregoing seems to embrace the principal points of enquiry suggested by your communication and instructions, and I trust that the same will be acceptable to the Department and the Government.

I have the honor to be, sir, your most obedient servant,

(Signed,) STEWART CAMPBELL.

Extracts from Canadian Sessional Papers, No. 81, 1870.

Mr. Romaine, to the Under Secretary of State, Colonial Office.

ADMIRALTY, 4th June, 1869.

SIR: I am commanded by my Lords Commissioners of the Admiralty, to transmit to you for the information of Earl Granville, copy of a letter from Vice-Admiral Sir Rodney Mundy, dated H. M. S. *Royal Alfred*, Halifax, 15th May, with its enclosures, relative to the protection of the fisheries in Canadian waters, and I am to inform you, with reference to paragraph I of that letter, that my Lords will, if the Secretary of State so desires, carry out the plan explained in Sir Rodney Mundy's letter, of receiving Custom House Officers or other duly qualified persons, on board Her Majesty's ships, to issue licenses and receive payment for them, but they feel bound to say, that, in their judgments, the very fact of such a plan being proposed, points to the inexpediency of employing Her Majesty's ships to enforce the Revenue and Municipal Laws of a Colony having such powers of self-government as are enjoyed by the Dominion of Canada.

With reference to the proposed regulations, they have to observe that the proposal of the Minister of Marine and Fisheries, is that if the license and payments are refused by a fishing vessel, she is to be compelled to depart or to be seized.

It is certain that the United States will send vessels of war to look after their fleet of 700 fishing vessels in the waters of the Dominion, and such a seizure as is here contemplated, may well take place in the presence of an armed vessel of the United States.

The knowledge and concurrence of the United States in these orders, before their being put in force, would seem to be necessary to prevent collision.

Communication and discussion before hand would perhaps save serious disputes.

My Lords would be glad, as this question may lead to serious complications, to receive precise instructions from the Secretary of State, as to the orders to be given to Sir Rodney Mundy.

They propose to telegraph the heads of any instructions, and to write to him by the mail of the 5th inst.

I have, &c.

(Signed) W. G. ROMAINE.

The UNDER SECRETARY OF STATE FOR THE PROVINCES, &c., &c., &c.

[Inclosure in foregoing.]

Vice-Admiral Sir R. Mundy to the Secretary to the Admiralty.

No. 127.]

ROYAL ALFRED,
Halifax, 15th May, 1867.

SIR: In transmitting, for the information of the Lords Commissioners of the Admiralty, the copies of a correspondence which has passed between the Governor General of the Dominion of Canada and myself on the subject of the protection of the fisheries in Canadian waters, I would ask to receive an early intimation of their Lordships' views, relative to permitting a Custom House officer, or other authorized official, to be received on board each ship employed on this service, for the purpose of issuing the licenses and receiving the fees.

2nd. I wish also to call their Lordships' attention to the measures which the Privy Council of Canada have submitted to Sir John Young, and which His Excellency has approved, for preventing the encroachment of the American fishing vessels within the treaty limits of three miles of British territory.

3rd. Since the termination of the Reciprocity Treaty in 1866, the system of "warnings" to trespassers, has not realized the anticipations of the Government by which it was established in that year, hence the desire of the present Dominion Executive to resort to the more stringent steps proposed in the Minute of the Minister of Marine and Fisheries.

In the course of the ensuing summer, when on an average of 700 vessels belonging to the United States are occupied fishing in these narrow waters, grave complications may arise, and possibly collisions take place, and the question is, therefore, one deserving of the serious consideration of Her Majesty's Government.

4th. In my letter, No. 122, of the 6th instant, I made their Lordships acquainted with the force I intended to employ on this service, and I shall remain in the *Royal Alfred*, on this division of the station, ready, should my presence be required, to proceed to the gulf.

I have, &c.,

(Signed)

RODNEY MUNDY,
Vice Admiral.

The SECRETARY OF THE ADMIRALTY, &c., &c., &c.

Extracts from Canadian Sessional Papers, No. 12, 1871.

Report of Canadian Minister of Marine and Fisheries on Lord Granville's Telegram re-definition of British Bays in Canada.

OTTAWA, 7th June, 1870.

Having reference to Lord Granville's telegraphic despatch of yesterday, referred to the undersigned for report, he begs leave to state, as mentioned in reply to a previous telegram from the Colonial Secretary, that precautions have been already taken against seizure by Canadian Officers of United States fishing vessels outside of three marine miles from land on the coasts of Canada.

The further hope is expressed by Her Majesty's Government that American fishermen will not be, for the present, prevented from fishing [except] in bays which are less than six miles broad at the mouths. The undersigned respectfully draws attention to the extremely objectionable nature of this proposal. The termination of the Reciprocity Treaty by the United States, and the consequent cessation of the labors of the Joint Commissioners embracing disputed points in the controversy suspended thereby, had the legitimate effect of leaving the in-shore fishery rights just as they stood in 1854. The main point formerly in dispute, involving the definition of bays, &c., has never since been conceded by the Imperial or Colonial authorities. It, on the contrary, has been steadily asserted in all subsequent correspondence and transactions. The letter of the Secretary of State for the Colonies, dated 12th April, 1866, expressly reserves it, and sets forth the opinion of Her Majesty's Government as clear on this point. The Canadian Government was, however, desired to forego "for the present" the strict enforcement of British rights in this respect, and "during the (then) present season," to accept a conventional arrangement affecting bays or creeks less than ten miles wide at their entrances. It was so accepted as part of the temporary system at that time proposed, but has shared with kindred provisions the disapproval repeated on various occasions by this Government during four years past. The policy adopted this year by Canada, and approved by Great Britain, would in its entirety supersede all provisional concessions heretofore subsisting. But in deference to the obvious wishes of Her Majesty's Government, this policy has been carried out in the spirit of Mr. Cardwell's Despatch of 12th April, 1866; and the same conventional limit of ten miles will be again for the present observed. The Government of Canada ought not, therefore, to be now desired to recognize, any further and fresh

limitation of our exclusive rights, however temporary and guarded it may be intended to be made.

This disputed matter has now been pending for upwards of twenty-five years, during which period the American Government has had frequent opportunities, and has been specially invited to join in an equitable adjustment of the same. The fault that it is still unsettled and the source of difficulty attaches to the United States Government alone. Great Britain and Canada are merely defendants, as in possession of a national right, existing in fact and in law.

The Council is aware when the British Government in 1845 opened the Bay of Fundy to American fishermen, as an amicable relaxation of treaty rights, the act was officially regarded as "a practical abandonment" by American authorities of the British construction of the Convention of 1818. It was immediately followed by a demand for general application to all indents exceeding "six miles" in width. This extraordinary demand appears to have been for the moment acquiesced in by Lord Aberdeen, for peace sake, but was soon afterwards rejected by Lord Stanley on the earnest remonstrances of the Colonies. Another concession in the same direction, as proposed by Lord Granville (identical in the words of that ineffectual and unjust claim), may be similarly construed to our detriment. Thus the whole policy of exclusion would be gradually subverted, and component parts of a question vital to the future welfare and interests of Canada become practically abandoned piece-meal.

The peculiar concession now suggested, would, it is believed, tend to create new differences with the United States instead of promoting any final settlement of the existing controversy.

Reference is particularly requested to Reports of the 15th and 20th of December last, in which the whole matter in question is fully set forth. The conclusions arrived at were, that, as the American Government had voluntarily terminated the Treaty of 1854, and ever since failed to consider any propositions regarding an equivalent for the use of our own fisheries, notwithstanding an intermediate license system which continued to United States citizens the same fishery privileges they had enjoyed under the Reciprocity Treaty, on merely formal conditions, all such concessions should be absolutely withdrawn and our rights duly enforced as they existed and were upheld anterior to that reciprocal compact.

The undersigned, therefore, respectfully submits that the terms of the policy already adopted—and now in actual course of being carried out—should be strictly adhered to.

The whole respectfully submitted.

(Signed) P. MITCHELL,
Minister of Marine and Fisheries.

Sir John Young to Lord Granville.

No. 165.]

NIAGARA, July 9th, 1870.

MY LORD: AS I had the honour to state on the 23rd June (No. 140) I forwarded your Despatch No. 138, of the 6th June immediately upon receipt, to the Council of Ministers for their consideration and guidance.

I pointed out at the same time that, in order to comply with your instructions, it was indispensable that the Special Instructions issued to the Officers commanding the Canadian Marine Police vessels should be brought into complete conformity with the latest instructions on the subject issued by the Admiralty to the Officers commanding Her Majesty's ships employed upon the station.

The enclosed Minutes of the Privy Council approves, under date the 29th June, of the amendments in the Special Instructions issued to the Officers commanding Marine Police vessels, which will, I trust, meet your approval, and carry out implicitly the views of Her Majesty's Government.

I have, &c.

(Signed)

JOHN YOUNG.

Earl GRANVILLE, K. G., &c., &c., &c.

Sir John Young to Vice Admiral Wellesley.

NIAGARA, July 11th, 1870.

SIR: In consequence of suggestions received from the Colonial Office, the Privy Council of the Dominion have consented to make some further alterations in the Special Instructions to the Officers commanding the Marine Police Vessels, so as to bring them into complete accordance with the instructions issued by the Admiralty.

I have the honor to enclose a copy of the Special Instructions, as so revised, for your information.

I have, &c.

(Signed.)

JOHN YOUNG.

Vice Admiral WELLESLEY,
C. B., &c., &c., Halifax.

Extracts from Debates and Proceedings of the Legislative Assembly of Nova Scotia, 1871.

WEDNESDAY, FEBRUARY 15, 1871.

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Mr. KIDSTON. * * * I would ask the hon. member for Halifax whether it is within his recollection or that of any man in Nova Scotia that any such difficulty has arisen before to call for such language as the President of the United States addressed to Congress lately with a tone of menace and hostility? No sir,—as long as Nova Scotia stood alone, as long as Nova Scotia could deal directly with the Imperial Government, and as long as the British Government had the control of the fisheries there was little chance of a misunderstanding with our neighbors and friends. But with three years experience of Confederation what has turned up? Last year, in the exercise of that control with which the British North American Act clothed them, the Dominion Government fancied that they were doing a great stroke of business when they scattered along the shores those fast sailing cutters, to teach Jonathan a lesson which he would

not soon forget, and to force a nation of forty millions against their will into a treaty. That, it is generally admitted, was the real design of the Dominion Government, but what has the result been? No person who is acquainted with all the facts which have come up from time to time can suppose that any nation will submit to have their property treated as the property of the American people has been treated by the officers of the Dominion, who have been sent along the shores not for the protection of our fisheries but, as I will presently shew, for aggression upon those people. I can also shew that these officers inflicted just as serious injury on our own people as they have upon the Americans. I do not mean to say that the Dominion Government had not a right to see that the Treaty was carried out, for it is plain that no vessel of American register should have been allowed to come within three miles of the shore to catch fish, but when the American vessels were debarred from coming into our ports and trading with our merchants for the necessities of their voyages, the Dominion Government shewed to the world that they had some other object than that of merely protecting the fisheries—there was a vindictiveness in the act which shewed a desire for hostility and a willingness to bring about a crisis between the two countries. Will any gentleman then rise and defend the course pursued in debarring our merchants from obtaining thousands of dollars from trading with the fishing vessels?—Furthermore, I ask will any member rise and vindicate the action of Dominion officers in driving American vessels out of the harbors in which they had taken refuge, in the face of a storm to live or perish as they might? No gentleman within this Assembly I am sure will vindicate such a course, and no one can deny that such cases have occurred. Our fishermen, likewise have been denied the privilege of selling bait to the American fishermen and of receiving their money in return. We had an instance in the Bay of Fundy of a vessel outside the three mile limit, having received and paid for bait from our fishermen and being seized and confiscated for it shortly afterwards. How can that be shewn to be legitimate or just? If the American in that case had laid himself open to the law our own countrymen were as much to blame as he in selling the bait and taking the money. But when I look at the amendment brought in by the Atty. General I feel, as I have often felt before, and as I felt when the Province was forced into confederation with Canada, instead of belonging to the power that once protected us, we have been transferred to another power—one that cares little what becomes of us. While the Americans have been prevented from coming into our harbors and leaving their money in return for the goods of our merchants, this has had no effect in Canada proper. What Canadian feels the effect of this policy? Right well do the Dominion Government know what the result of the policy has been. By the course which they have pursued they have raised up a hostile feeling on the part of the American Government who, if not altogether, dead and senseless to the rights of their people must feel indignant that their fishermen should be debarred from receiving supplies, and ours should be deprived of one means of earning a subsistence for their families.

I will ask any member to place himself in the position of the owner of one of these American vessels, such as that seized at Cape North by Tory, a vessel which was not fitted out for the prosecution of the

inshore fisheries at all, but which was fitted out for the Bank fisheries, and which was seized and confiscated because she put into Cape North to get wood and water, and while her captain was ashore on business, one of his crew put a line overboard and caught six or seven fish to have a fresh mess on board. I ask what member of this House, who had lost thousands of dollars in that way, would not seek, in his heart and with his right arm, if he had the power, to annihilate the country in which he had been so treated? I ask that question of any one who has a sense of justice and of right. I will refer to another instance to show how willing the Dominion government are to inflict punishment if they possibly can upon Nova Scotians as well as Americans. I allude to the case of Captain Cameron. His vessel was seized, and he was tried for smuggling. When he went into a court in which there was a jury of his countrymen, he was honorably acquitted; but when he went into a court in which there was no jury, and in which a single individual—an officer of the Dominion Government—held in his power the destinies of those who come before him; how fared he there? He was fined \$850, was ruined and left in a state of poverty, and what was the charge that was made against him? That he had gone into a port that was not a port of entry. Be it remembered that he had been months away from home; in that very port his wife and children lived, and he simply made a call to see that all was well. * * *

FRIDAY, FEB. 17.

* * * Hon. Mr. FLYNN. * * * Representing as I do a county whose population is largely engaged in the fisheries it would be strange if I did not assert the rights and protect the privileges of our fishermen—a class whose vocation is one of toil and hardship, who are exposed to perils of no ordinary character and who in most cases in this country drag out a miserable existence without the fostering care which in other countries is so generously bestowed. During the discussion some observations which deserve from me a passing notice have fallen from the hon. member for Halifax. That gentleman has charged the government with being wanting in their duty in not tendering their thanks to the Dominion Government for the protection of the fisheries during the past year. I, in common with my colleagues, saw very little to be grateful for in the protection given by Mr. "Mitchell's Navy" as it is termed. While coinciding with the hon. member for Halifax both as to the value of the fisheries and the importance of fully protecting them to the exclusion of the Americans from the three mile limit, I cannot go the length which he would and say that it is cause for congratulation when those who come to our shores for the purchase of commodities from our people are driven from our coast. There is nothing in that to congratulate ourselves upon, for I distinctly and emphatically condemn that policy while entertaining views in favor of strictly enforcing the treaty in the protection of our fishing grounds from intrusion. It is a well known fact to persons who live along the shores of Nova Scotia proper and Cape Breton that the schooners employed by the Dominion Government so far from protecting our fisheries by remaining on the coast where American fishermen were resorting for the catch of fish they were

invariably to be found in the harbors, and particularly in the Strait of Canso, preventing the sale of any commodities by our people to the Americans. In many cases the vessels which they drove off were not fitted out for the inshore fisheries but for the deep sea fisheries, and only came to our shores for the purchase of bait and ice, &c. These are the persons who were driven away, and we are asked to offer our most grateful thanks to the Dominion Government for this. It is true that by the treaty of 1818, not only are American fishermen prevented from participating in the inshore fisheries, within three miles, but they are also prohibited from purchasing any supplies excepting wood and water. While advantages might arise from a rigid enforcement of the treaty as regards exclusion from the fisheries, I contend it is a cruel injustice to our people to neglect to enforce it in that particular, but to enforce it in a particular where it must have the most injurious effects. If the true interpretation of the treaty be, as it is contended by the Dominion authorities, that any American fishing vessel calling at our harbors, for any articles other than wood and water is liable to confiscation, I ask if the policy that suited the province of Nova Scotia in 1818 will suit it in 1870? If not, it would be unwise to enforce the treaty in that particular. I take that ground, and I think it a tenable one, because, I would ask, would the people of England today submit to be restricted to the same commercial privileges they had in 1818? Would the manufacturers of England submit to a treaty that would prevent a foreign people from being their customers? No, Sir, they would not, and I therefore hold that it was unwise to enforce the treaty in that particular, even if it were wise to adopt any such restriction in 1818.

But having said this much, I will go a step further, and say that we have no reason to thank the Dominion government for the protection of the fisheries. I am prepared to shew that they have not protected them, that they have not driven the American fishermen from the coast; that they have not been the means of our fishermen catching any more fish; that they have not by their so-called protection raised the price of fish in the American market, and that our fishermen have still to contend with a hostile tariff. I will go still further, and contend that in excluding the deep-sea fishermen from traffic with our people, they are going a step beyond the treaty. That treaty was designed to secure the rights of Colonists, and what were these rights? The rights to the inshore fisheries within the three mile limit. While, then, it was competent for the Dominion government to guard these rights, I contend that they had no power to control the fisheries which were a hundred miles beyond the reach of any international treaty. I contend that it was not the intention of the statesmen of England, in entering into that treaty, to say that fishermen pursuing the deep-sea fisheries were excluded from purchasing commodities in the markets of the Provinces; if, in fact, such persons could be excluded from trading with our people, the same restriction might be extended to American merchantmen. This stringent prohibition was made in view of the inshore fisheries; and therefore, instead of conferring a benefit on the country, the Dominion authorities have in that particular exceeded the limits of the treaty, and inflicted a serious injury upon our people.

Extracts from the Journal of the Legislative Assembly of Newfoundland, 1876.

Resolutions adopted at a meeting of the Executive Council of this Colony for transmission to Her Majesty's Government upon the subject of French aggressions and British rights on that part of the coast commonly termed the French Shore.

Resolved, That by the Treaty of Utrecht the exclusive sovereignty of the whole territory of Newfoundland and the Islands adjacent thereto were conveyed by His Majesty the King of France to His Majesty the King of Great Britain and his heirs for ever in full right. But His Majesty the King of Great Britain, by the same Treaty, conceded to the subjects of His Most Christian Majesty the privilege of a concurrent right of fishing on that part of the coast of Newfoundland extending from Cape Bonavista to Point Rich, together with the liberty to land their fish and dry them. The following is the language used in the Treaty. "The Island called Newfoundland with the adjacent islands shall from this time forward belong of right *wholly* to Great Britain."

"Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter lay claim to the said Island and Islands, or any part of it or them."

That by the subsequent Treaties of Paris and Versailles and by every succeeding Treaty, these rights were affirmed to His Majesty the King of Great Britain and his heirs, with the following exceptions: That by the Treaties of Paris and Versailles His Majesty the King of Great Britain ceded in full sovereignty to His Majesty the King of France the Islands of St. Pierre and Miquelon, subject to given conditions, together with the privilege to his subjects of fishing concurrently with those of His Britannic Majesty "on that part of the coast of Newfoundland extending from Cape John passing to the north and descending by the western coast of Newfoundland to the place called Cape Ray, situate in forty-seven degrees fifty minutes north latitude," in exchange for that portion of the coast extending from Cape Bonavista to Cape John, which His Most Christian Majesty assented to abandon.

That on the introduction into this Colony of self-government by virtue of its great charter granted by His late Majesty King William. and affirmed by subsequent acts of the Imperial Government and of the Legislature of this Colony, all the rights which Great Britain possessed in Newfoundland became under stipulated conditions the property of this Colony, and is now held in trust by its Government for the benefit of the people. That such is the high appreciation in which these Treaty rights are, and ever have been held by the inhabitants of this Colony, that no minister in this country would dare to compromise them in any manner. Not an inch of their soil, not an atom of their concurrent rights in the fisheries, on the so-called French Shore, would any permanent resident of sound mind in the Colony consent to part with.

That out of deference to the perplexities which circumstances have imposed on the Imperial Government in their negotiations for many years past in regard to this subject, the aggrieved parties resident on the so-called French Shore have borne with great forbearance the studied audacious periodical robberies, and other grievances perpe-

trated on them by the French when peaceably engaged in their fishing operations. But should such conduct be repeated, the Government greatly fear that when the hope of legal redress ceases to exercise its influence on them, our people may be induced to make reprisals for the wrong done them.

That with the view to establish a preposterous and untenable claim to an exclusive right in the place of a concurrent right of fishing on the most valuable part of our fishing grounds, the French have, and more particularly of late years, by force attempted to assert that right.

That the inhabitants of this Colony appreciate the able and successful manner in which Lord Palmerston, and other able British statesmen, have from time to time sustained their Treaty rights. Had there been the slightest misunderstanding with regard to our concurrent right of fishing, it surely would have been put at rest at the same time when the islands of St. Pierre and Miquelon were conveyed in full right to France, and in the same unmistakable language, or it would have been so inserted in some subsequent Treaty; but this was never done, and we have exercised and maintained our rights ever since with an annually increasing population.

That there are localities on the so-called French Shore which have been exclusively occupied by the French time out of mind, and others in like manner occupied by British subjects. During the time of war British subjects took possession of those French premises, and in some cases refused to conform to the stipulations of the Treaties when peace was restored. Hence the Imperial act which was passed to meet the contingency and the Proclamations of Governors ordering the removal of such parties. In no other case was that Act ever availed of. There is no instance on record where the French have been interrupted in the rightful exercise of their fishery. All the collisions, with respect to the fishery, have been from the unlawful interruptions and aggressions on British subjects by the French.

That the Treaties provide that no fixed settlement shall be erected on the so-called French Shore. But the fact is, as if by mutual consent, both the French and British have disregarded this restriction, for both have fixed settlements, and British subjects are employed by the French to take care of their property during their absence. The French do not and have no right to reside in Newfoundland during the winter season.

That there is an Act in existence VII. Victoria, authorizing the issue of grants of land without any restriction as to the so-called French Shore, and a subsequent Act, which received the special sanction of Her Majesty after twelve months' deliberation, under which licenses to search for minerals have been issued and grants made subject to French rights.

That the extent of the coast-line of the so-called French Shore, inclusive of the sinuosities of the Bays and Inlets, is little short of the one-half of the whole sea-coast of the island. Of this great distance the French occupy a small fractional part only; the British are scattered more or less throughout the whole length.

That the rights of fishing involved in the absurd claims of an exclusive fishery by the French are not limited to the residents of Newfoundland; they are the rights of the other provinces of British North America, and also those of the United States, to the latter

granted them under their Treaty with Great Britain in the year 1818. England could not and would not have granted to the United States that which she had no right to grant, and much less would she deprive the inhabitants of the soil of rights she had granted to non-residents and to aliens.

That should Her Majesty's Government deem it desirable to appoint Commissioners to negotiate with the French Government with a view to the settlement of existing disputes between the fishermen of the two nations, such Commissioners should be instructed to make no concession whatever of any part of the soil beyond the privilege to which the French are entitled under existing Treaties, namely:—"To erect stages made of boards, and huts necessary and usual for drying fish, nor to resort to the said Island beyond the time necessary for fishing or drying fish;" nor any fishery rights other than a concurrent right, to which only they are entitled.

That the simple questions for the consideration and decision of the Commissioners be limited to the beach or strand necessary for the purposes contemplated under the Treaty, extending from the sea towards the interior, limiting that space to the necessary requirements of "landing and drying their fish," and their sea-fishing to the entrance of the rivers flowing from the interior within which rivers the French have no right of fishing whatever.

That the valuable and important privilege to purchase bait, both herring and caplin, on the Southern Coast be conceded to the French to be exercised at such times as British subjects may lawfully take the same, conditionally that the French abandon their untenable pretensions to an exclusive fishery.

The foregoing Resolutions were read and adopted by His Excellency the Governor and Council, and a certified copy handed His Excellency for transmission to the Right Honorable the Earl of Kimberley, 1st September, 1873.

Extracts from the Debates of the Senate of the Dominion of Canada, Session 1888, on the Fisheries Treaty Bill.

(Second reading.)

(April 25, 1888.)

(Hon. Mr. ABBOTT.) * * *

We know of course that before the war of 1812 there existed a treaty which gave great privileges to the United States fishermen—much greater than have existed since—in fact an almost community of right of fishing between them and the fishermen of our country. By the war of 1812, as Great Britain contended this treaty was virtually cancelled, and similar discussions and difficulties to those which we have had since commenced after the war of 1812, and lasted until the treaty which is now in force was passed in 1818. Between the termination of the war and the making of the Treaty, difficulties and disputes constantly arose. The Americans contended that the war had not destroyed the force of the Treaty; that it was still binding; that they had the free right of fishing along our coasts as we had ourselves; and they endeavored to enforce these rights, that is to say

they endeavored to practice what they claimed they had the right to do, by their fishermen coming within our territorial limits, in consequence of which there were frequent seizures made of their fishing vessels before the Treaty of 1818. In point of fact immediately before the Treaty of 1818 much bad feeling existed among our neighbors on this subject, and we were very much in the same position as during 1886-7. By this Treaty of 1818 a definition was attempted of the rights which the United States fishermen should be entitled to exercise along our coasts, and I would like to recall to the memory of the House the precise language of that Treaty. By its terms, which are very short, it was declared that:

"It is agreed between the high contracting parties that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea Islands, on the western and northern coast of Newfoundland; from the said Cape Ray to the Quirpon Islands; on the shores of the Magdalen Islands; and also on the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northward, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador, but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground; and the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages, therein, of purchasing wood, and of obtaining water, and for no other purposes whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The limits to which a part of this clause refers are limits with which we need not deal now—limits within which certain privileges were granted to the United States fishermen; but that portion of it does not now necessarily come under our consideration. But while granting the privileges mentioned in the treaty, it declares that in using them the fishermen shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish within the prohibited limits, or in any manner whatever abusing the privileges thereby reserved to them. That was in 1818, and for thirty-six years we lived under the regime of that treaty. During that period, gradually the same class of difficulties arose as those which we had experienced before 1818, only they were more pronounced in their character, inasmuch as there was a more definite law which we claimed was

habitually infringed by American fishermen. For those thirty-six years the questions which have agitated these two countries were constantly under discussion. It was contended by the Americans that the territorial limits defined by the treaty of 1818 extended only three miles beyond the shore, and that in measuring that distance the sinuosities of the bays, harbors and creeks were to be followed, while we contended on the other hand that the bays, etc., were not to be entered at all, but that the three mile limit was to be calculated from a line drawn from headland to headland of these bays, harbours and creeks. This contention grew from time to time, but only assumed very definite and decided proportions somewhere about 1840 or 1841—some twenty years after the treaty. There is no doubt disputes had been constantly going on with respect to this and other disputed points arising out of the treaty; and on several occasions the United States had insisted on its views; but the dispute only reached a definite and decided form about the period referred to. At that time and afterwards, however, their pretensions as to this and other points, were urged and persisted in, and formed the subject of frequent diplomatic correspondence between the two countries; and finally the disputes reached a point where it became obviously necessary that some definite decision should be arrived at upon them. Seizures of vessels were again constantly made; again the same exasperation was felt in the United States, especially amongst the fishermen, as to what they thought were the improper restrictions imposed by Canada, and as to the mode in which those restrictions were enforced; until finally the difficulty was terminated by the Treaty of 1854, ordinarily known as the Reciprocity Treaty.

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In addition to this limitation created by the Act, there is a specification of a number of bays which exceed ten miles in width, which are nevertheless to be included in British waters under the delimitation to be made by the Commissioners.

There are ten of these bays, and they include all the important bays over ten miles wide at their mouths, in the Province of Quebec, Nova Scotia, and New Brunswick, with the exception of Bay St. George; and they also include some of the bays in Newfoundland.

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The fifth paragraph of the treaty contains a provision with respect to bays which are more than 10 miles wide, but which, nevertheless, United States vessels could not enter under the three-mile limit conceded for by themselves. It is to the effect that nothing contained in the treaty shall be held to include in common waters any interior portions of any bays, creeks, or harbors that cannot be reached from the sea without passing within the three miles mentioned in the first article of the treaty of 1818. That, as I understand it, and as it has been explained to me and I think reasonably, is to cover the case of a bay more than ten miles wide which has an island or islands in its mouth, and which could not be entered by United States vessels, independent of this treaty, under their own interpretation of the law without coming within three miles of the shore; because of course a British Island is the British shore as much as the mainland; and a bay fifteen miles at its mouth, which if this clause had been omitted, could have been entered by foreign vessels, though there might be an island more than three miles wide

at the mouth of it, would be prevented under this clause from being so entered. That is to say, an American vessel, could not enter such a bay without passing within three miles of some shore, either the main shore or the shore of the Island: and this provision is inserted to avoid the possible interpretation that inasmuch as such a bay is more than ten miles wide, they could enter it. If they could not have entered it under their own construction of the treaty, then they cannot enter it under this treaty, although the mouth of the bay may be more than 10 miles wide. That is the construction which I understand, and believe to be the true one, of this clause, about which there has been a good deal of discussion. The 6th, 7th and 8th clauses deal with mere formalities as the mode in which the delimitation of the lines is to be decided. Article 9 is as follows:

“Nothing in this treaty shall interrupt or affect the free navigation of the Strait of Canso by fishing vessels of the United States.”

The 10th Article of the treaty provides that United States fishing vessels entering the bays or harbors referred to in Article one of this treaty, shall conform to harbor regulations common to fishing vessels of Canada or Newfoundland. The Article goes on to deal with the four cases justifying the entrance of vessels into one of our ports under the treaty of 1818. It says:

They need not report, enter, or clear, when putting into such bays or harbors for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water; except that any such vessel remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter, or clear; and no vessel shall be excused hereby from giving due information to boarding officers.

The object of this is plainly to make clear that when they come in for these four purposes they need not be dealt with as trading vessels. In effect the latter part of the paragraph amounts to this—that if they stay in the port longer than is necessary for the purposes specified in the treaty of 1818, then they shall be dealt with as ordinary trading vessels. The conclusion of this Article is as follows:

They shall not be liable in such bays or harbors for compulsory pilotage; nor, when therein for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water, shall they be liable for harbor dues, tonnage dues, buoy dues, light dues, or other similar dues; but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of October 20, 1818.

This also applies to the four purposes for which American fishing vessel are authorized to enter our ports by the treaty of 1818. It is merely to remove the pretention, that a vessel entering a harbor for the purposes of shelter, or repairing damages, or purchasing wood or obtaining water—which are really purposes justifiable on the broad principles of humanity—shall be liable for compulsory pilotage or any of those dues which are imposed upon trading vessels making use of those ports.

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This examination of the treaty seems to me to bring out—at least I intended it to do so—the changes which have been made from the

state of things that prevailed under the treaty of 1818, and I propose just to look cursorily at one or two of the more important provisions of the treaty, more especially those that have been claimed to be a surrender of the rights of this country, or Great Britain as representing this country, with regard to the fisheries. The first and the one about which most has been said, is the delimitation of the bays, creeks and harbors, and it has been contended that by fixing the ten miles limit to the width of a harbor, as indicating the point from which the three mile measurement should be made, we give up largely our rights over the waters of our coasts. Now I maintain that that is not so, and I think it may easily be shown not only that we have given up nothing that we have ever insisted that we were entitled to, but that we have got a difficulty settled, which might have been decided very much to our disadvantage. What is the limit of the width of a bay or harbor which is not to be a common bay or harbor under international law? Now I defy any gentleman to point out to me any positive determination of that question. Writers on international law speak of it in various terms. Some of them say that it must not be a very large bay; others give various other approximate descriptions of what should constitute a bay belonging to a nation.

Hon. Mr. DICKEY. Chesapeake Bay, for instance.

Hon. Mr. ABBOTT. My hon. friend is now speaking of a bay which our neighbors have determined to keep to themselves, and to exercise exclusive powers over. Whether they are right in theory, as a matter of international law, is another question. Another writer describes national water as the extent over which a nation is able to maintain control. He does not define it. It is generally conceded to be as far as a cannon shot can go from the shore, which has been conventionally recognised as three miles. But the Russians have lately been contending that as a cannon shot can now be projected more than three miles from the shore, the limit should be correspondingly extended. So those persons who follow Mr. Vatel and others, who have assumed three miles as a convenient limit for the rights of nations, may find that limit too narrow. However, the limit broadly stated by Vatel is that the right of a nation over the sea adjoining its coast really extends just as far as it is able to maintain control. That principle, it is true, civilized nations nowadays do not hold as a rule: although the United States have broached very extensive theories about their rights over the sea. They have gone so far as to contend that war vessels cannot cruise within so many miles of their coasts, and I think have complained of war ships coming within twenty miles of them. They have laid down the doctrine in its broadest form with regard to their bays, the Chesapeake being one of them. They claim the entire jurisdiction over them all, whatever may be their width, but that has not been, and is not now, the rule usually followed by maritime nations. A great many of the important and leading nations of the world have agreed among themselves as to what is to be the size of a bay which shall not be a common bay—which shall be the territorial property and under the jurisdiction of the nation within whose territory it practically extends. We ourselves before the treaty of 1854 spoke of the ten mile limit as being a reasonable limit. We proposed after the treaty of 1854—I am not

sure whether we did not before the treaty of 1854—to take that as our limit.

Hon. Mr. SCOTT. The United States were willing to concede the ten mile limit.

Hon. Mr. ABBOTT. After the expiration of the treaty of 1854, Great Britain declined to enforce the seizure and forfeiture of ships taken at a greater distance than three miles from the shore, even within any bays, harbours and creeks, using the language of the treaty of 1818, and it was only after remonstrances by the Government of this country, claiming that the ten miles was the proper limit, that Great Britain was disposed to concede that it might be ten miles, but it did not and would not order its vessels to make seizures governed by that delimitation, always confining them of late to the distance of three miles from the shore, whether in or out of a bay or harbor. That is the way the question stood as between Great Britain, Canada and the United States when this treaty was entered upon. Our own Government contended for the ten miles; England and her law officers followed the doctrine very much of the United States in that respect. The law officers were not disposed to place any territorial limit to the width of our bays. They said we had a right to have the lines measured from headland to headland, but though that opinion was given many years ago, it was never acted upon by Great Britain by enforcing its territorial jurisdiction beyond the three miles. We ourselves contended, without any censure or reproach that I have ever heard of, that the proper delimitation should be ten miles.

Hon. Mr. SCOTT. The Americans have been willing to concede that.

Hon. Mr. ABBOTT. The Americans have contended that it should be six miles; that is their diplomatic contention, found in reports to the British Government and in the diplomatic correspondence which was constantly taking place between the two countries except while the treaties of 1854 and 1871 lasted. That delimitation of ten miles was one which was recognized elsewhere.

Hon. Mr. BOTSFORD. In the north of Europe.

Hon. Mr. ABBOTT. There was a convention between England and France in 1839 with respect to this question by which the limits were fixed at ten miles, and there was a treaty between England and Germany in 1858 to the same effect making the limit ten miles. There was the north sea convention between England, France, Belgium, Denmark, Germany and the Netherlands by which the limit was fixed at ten miles, so that practically all the great nations of Europe have agreed (with the exception of Russia apparently and Austria, but Austria has not much to talk about in the way of sea board) and have become parties to conventions fixing the delimitation at ten miles.

Hon. Mr. McINNES (B. C.). Does that mean following the sinuosities of the shore?

Hon. Mr. ABBOTT. No, drawing lines from headland to headland where the bay is 10 miles wide. That is what is agreed upon by all the leading nations of Europe except Russia and Austria, and what is agreed upon by this treaty. The Americans yielded so far as to abandon their pretention that the limits should be 6 miles—that is to say, a marine league from each shore. England abandoned it, as she has done in these conventions since 1839; and all the European nations practically had abandoned the theory, that the limit should

be less than 10 miles, and the treaty fixes that limit. It does precisely what England, France, Germany, Belgium, Denmark and the Netherlands had done before the plenipotentiaries settled what, by the consensus of the greatest commercial nations of the world, for 50 years past had been agreed upon as the delimitation of bays, harbors and creeks. I venture to say that that was a reasonable way to settle the question—a way to commend itself to any man who was disposed to settle the disputed point by an impartial arbitration—by third parties in whose judgment he had confidence. If it had been possible for the two nations themselves to have come together, it could not have been contended by any reasonable man in either of them, that to adopt ten miles as to the delimitation of those bays—following all the commercial and maritime nations of the civilized world—as a solution, was anything unworthy of the dignity, or derogatory to the rights, of either of the contending parties.

Hon. Mr. SCOTT. My hon. friend is aware, I suppose, that the American Government offered that twenty-two years ago, and have offered it repeatedly since.

Hon. Mr. ABBOTT. I have not seen it so stated. I have seen a great many cases in which they contended for the six miles limit: I have seen it in the letters of their greatest diplomatists, and the only person of importance who seems to have countenanced the idea that that was not a fair view of the treaty of 1818, was Mr. Webster, though he only gave an uncertain sound on the subject. I do not pretend to say that different opinions did not exist, but I do say that no one will declare that it had been the policy of the United States Government to concede the ten miles limit.

Hon. Mr. SCOTT. Yes, yes, as I am prepared to show!

Hon. Mr. ABBOTT. That cannot be said with propriety. The principal for which the United States Government contended was that the three-mile limit should follow the sinuosities of the bays and harbors. Whatever isolated expressions of opinion my hon. friend may find in the utterances of some leading statesmen I cannot say, but that was the general principle which governed the political relations of the United States with England. It was the principle to which they attached themselves and with which we had to deal.

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Hon. Mr. SCOTT. * * * I say that while the other causes I have adverted to have undoubtedly had their weight, yet the chief cause of opposition to this treaty has been the irritating manner in which the treaty of 1818 has been put in force during the past two years. There is the main reason why this treaty will be rejected, because the treaty of 1818, which this proposes to modify, was wholly unsuited even for consideration in the year 1888; that the circumstances of 1818 and the circumstances of 1888 are so widely different that they do not even offer a fair basis for a new treaty. I approve of the Government treaty as far as it goes, because it is liberalizing the treaty of 1818. It is necessary for us to consider the circumstances, and we have to consider that this matter has been discussed from an entirely different standpoint from ours. We are simply one of the parties to the treaty and we may just as well consider what view the other side takes, and what are their opinions about it in order that we may fairly gauge our position in reference to the subject. Now,

today, we must go back to the year 1783 when the treaty was made at Paris. At that time provision was made for the share that the Americans, the 13 colonies, (as their independence was then recognized) should have in those fisheries. I will briefly read what they were from the treaty made at Paris after the revolutionary war:

“It is agreed that the people of the United States shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish; and also, that the inhabitants of the United States shall have the liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that Island), and also on the coasts, bays and creeks of all other of His Britannic Majesty’s dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.”

The only deprivation that they sustained then was the right to cure their fish on these parts of our coasts that were inhabited; where settlement sprang up that right ceased. In all other particulars they had equal rights with the provinces to share in the fishing.

In this treaty there was no three-mile limit. There was no head-land question. There was no refusal to trade. They could come in and trade with the people just as much as they liked. That lasted until the war of 1812. It continued down for 35 years, and then a treaty was made. In that treaty no allusion whatever was made to the Fisheries question; the Americans believing that their rights continued as under the former treaty, frequented the fishing grounds, and for a time enjoyed the privileges of them. England subsequently intervened, and refused them the right. Negotiations took place, with the result that the treaty of 1818 was agreed upon. Now, in order to understand the question, just go back to 1818 and consider the condition of things. England in 1818 was relieved from any European embarrassment. Napoleon was a prisoner at St. Helena, and England was all-powerful at sea and on land, having conquered all the enemies that had for a quarter of a century been worrying her. At the time of the treaty of 1818, what were the conditions of the provinces, and the then emancipated colonies of the United States? American vessels entering the provincial ports were liable to confiscation. Provincial vessels entering the ports of the United States were liable to confiscation. No trade existed between them. The law passed the other day by Congress at Washington, in a state of irritation, the Non-Intercourse Act, was mild in its character compared with the condition of things which existed in 1818 when this Treaty was made. Great Britain did not permit provincial vessels to carry trade to the United States, nor did she allow American vessels to trade with the provinces; yet hon. gentlemen would seem to justify the application of the Treaty of that day to the year 1888, when the

whole subject matter of the relations of the two countries has, I am happy to say, undergone an absolute revolution. The Treaty of 1818, as the historian when free from prejudice will picture it, was a victory of a strong power over a comparatively weak one. It is just such a treaty as Germany would have made with France after the capture of Sedan. It was a treaty of a great power made with a weak power. I say it was a treaty unworthy of the great power that dictated it, and wholly unworthy of being looked upon as forming the basis of a negotiation of 1888. Some hon. gentlemen smile. I dare say it is a very radical doctrine, and it offends the sensibilities of a great many hon. Senators; but I am speaking substantial truth—truth that will be admitted as sound doctrine before another quarter century goes over. It is a doctrine which may be unpalatable just now, because we are living under unwholesome conditions; but I ask any man to take up the trade relations which exist now between us and the United States, and the relations which existed then, and say, if a new treaty were made today with no knowledge of the past, would it be possible to form a treaty such as the treaty of 1818?

Hon. Mr. ALMON. That is an argument in favor of the adoption of the new treaty.

Hon. Mr. SCOTT. Yes, and I support the new treaty most heartily.

Hon. GENTLEMEN. Hear! Hear!

Hon. Mr. SCOTT. My only objection is that it was not made part of our constitution long ago, wholly irrespective of the action of the United States; and I say that even should the Senate of the United States throw out that treaty, I trust that the Government of this country will put it on record as part of our law, and as our interpretation of the Treaty of 1818 until a better day shall dawn. I say, speaking in the interests of the people of this country, that is the true principle today, wholly irrespective of what is done on the other side of the line, that we should, at all events for the present, attach that interpretation to the treaty of 1818. Would it have been possible for the two countries to have lived under a strict enforcement of the provisions of the treaty of 1818 to the present time? I say emphatically no; it would have been an utter impossibility. Down to 1830 there were no trade relations of any kind between the Provinces and the United States. There were, all along our frontier, on both sides, armed forts. People did not cross. There were no such things as ferries in those days; we had no intercourse with our neighbors. They were a strange people whom we hated, and they hated us. A most anti-national feeling prevailed between the two countries, and it continued down to 1830. President Johnson's Proclamation, of the 5th of October created a partial reciprocal commercial intercourse between the two countries.

Hon. Mr. MILLER. Does my hon. friend cite this as an authority for the statement that fell from him just now that before that proclamation British vessels had not the right to enter American ports?

Hon. Mr. SCOTT. I say that provincial vessels were liable to confiscation on entering ports of the United States.

Hon. Mr. ALMON. I presume it would be the same with any vessel coming from a British possession.

Hon. Mr. SCOTT. The relations between the two countries were so strained—that is the modern term—that trade between the Provinces

and the United States was practically abolished. Of course the laws were not enforced rigidly. I do not pretend to say that hon. gentlemen cannot point out exceptions; but the laws were so utterly abhorrent to the people that they were not enforced. No doubt vessels did go in, and we had a sort of illicit traffic between the two countries, but it was contrary to the law of the land unless it was done in British ships. The British Government did not allow any Provincial vessels to carry on trade with the United States. That continued until 1830, when a change took place, and reciprocal intercourse with the United States became easier. Since 1854, with the exception of a period of six or seven years, during which time our relations with the United States have been growing more natural, more pleasant and more friendly, this treaty of 1818 was in force.

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Hon. Mr. SCOTT. It came to an end in 1866, and this protection which my hon. friend described then began, but, as he admits, it was not enforced with such strictness as on former occasions. We had not then the National Policy; we had not a high tariff; we had not the customs laws developed to the condition they are today; and so the old treaty of 1818 was not enforced with the same strictness that it was in 1886 and 1887. However, a relief came in the Washington Treaty of 1871, and that lasted until July, 1885, and was continued until the end of that year. Then we were again back on the treaty of 1818, which was wholly unsuited to the condition of things that in the meantime had grown up between Canada and the United States. What was the policy of the Government then? It was announced that the National Policy was to be one of the levers that was to bring about reciprocity. It had not, however, succeeded. Then it was determined that we should put the screws on the United States—that we should enforce this old and barbarous treaty, and that we should insist on having our pound of flesh—that we should carry out the treaty of 1818 in order that we might force the United States to admit Canadian trade into their markets.

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Hon. Mr. SCOTT. * * * They distinctly affirm the principle that they will have their pound of flesh under the treaty of 1818 in this year of grace 1888. I ask you could anything be more irritating or exasperating thrown at the people of the United States than that attempt of ours?

The Government now are only too glad, through the instrumentality of the Commission, to give away what they ought to have given 2 years ago—what they ought never to have claimed. Had the Government of this country acted in a fair and liberal spirit and on a just interpretation of this treaty of 1818, it would not have been necessary to have the treaty of 1888. The Americans wanted no more than they got and we ought to have given it to them with some degree of grace, not in the manner in which it has been done. Now let us take, in contrast with that, the opinion of one of the Provinces of the Dominion before she came into Confederation, let us take the opinion of Prince Edward Island. What was their view of the treaty of 1818? It would appear that this treaty was practically abrogated by the independent Island before it became part of the Dominion of Canada. And their attention was called by the Gov-

ernment to the infractions of the treaty which they were permitting and the Legislative Council were called upon to report upon the case—to state why these infractions of the treaty were permitted. It is referred to Council and the following is the report:—

Your honor entertains doubts as to the legality of the practice under the provisions of the Treaty of 1818.

In reply, the Council asks permission to state:

1. That the existence of the practice referred to by your honor was mentioned in the Council's Minute of June 1, in the present year, addressed to your honor in reply to a despatch of Earl Granville's, wherein his lordship desires to be informed whether certain statements concerning the fisheries in Prince Edward Island are correct; as a copy of that minute was forwarded to the colonial office, and its receipt has been acknowledged, but no comment made on its contents or any intimation given to this Government that a change of system, with regard to foreign fishing vessels, was contemplated, the Council had assumed that the explanations offered by them were satisfactory, and that no change affecting this Island would be carried into effect at present.

II. Lest it should be supposed that the people of this Island alone, of all the Maritime Provinces of British North America, have deliberately, and with the connivance of their local Government, carried on an illegal but lucrative business, the Council remind your honor, for the information of the Secretary of State, and the practice referred to in your honor's minute, has, until a recent period, been permitted in the Straits of Canso, that the New Brunswick railway has transported large quantities of fish of foreign take and that Her Majesty's representatives could not fail to be cognizant of the practice of transshipping cargoes and supplying foreign fishing vessels; moreover, no attempt at concealment thereof was made in the summer of 1869, during the visits of two Vice-Admirals and several Commanders of Her Majesty's ships to Charlottetown Harbor; consequently it is not surprising that merchants and traders in this colony should regard the practice referred to without suspicion of its illegality.

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V. Having thus acquitted themselves of their duty, and caused the law to be carried into effect, though at a sacrifice to their fellow-colonists, which will be little understood or appreciated elsewhere, the Council feel bound to protest against the policy now re-adopted. That policy may have been well suited to the circumstances of the colonies fifty-two years ago, but the Council ventures to think, is inapplicable at the present day, when free trade principles, which a British nation had declared to be the principles of common sense, form the basis of the British commercial code. Fairly stated, the old policy revived, demands from the people of Prince Edward Island the exclusion from their harbors of their best customers—customers who have employed the colonial marine in importing salt for their use; the colonial mechanics in manufacturing their barrels; customers who have purchased their clothing, their provisions and their sea stores in the island markets. These men are to be expelled until the forty million citizens of the United States succumb to the pressure put upon them by four million colonists, and consent to concede reciprocity in exchange for free access to the fishing grounds and

harbors of the colonies. The Council submit that this was not the principle on which the Cobden treaty was based. It was not held by its author that because France declined to reciprocate with England as fully as the latter desired, therefore England should tax or exclude the wines of France, until she consented to remove her protective duties from iron and cutlery.

“VI. If little can be said in favor of the revived policy of 1818 in an economical point of view, still less can be said in its favor politically. It is essentially a policy of exclusion enforced by the armed ships of Her Majesty’s fleet, and therefore tends seriously to estrange a friendly but proud and sensitive nation, whose citizens freely admit the rights of Great Britain to prevent them from fishing within the three miles limit, but who assert that their cargoes of fish taken without that limit are not contraband, and that to refuse the right of entry at such Colonial custom houses is unfriendly, and they affirm, illegal; and this view of the case has been taken by an eminent Queen’s Counsellor of the Prince Edward Island bar. The Hon. Edward Palmer, who agrees with the Attorney and Solicitor-General in their view, supposing the cargoes of fish for which entry was sought to have been taken within the three miles limit, but asserts that for cargoes taken beyond that limit, the right of entry cannot be refused.

VII. The Council would also urge upon the notice of the Secretary of State, the impolicy of pressing an odious system upon an unwilling people. They assure Lord Kimberley that their fellow colonists are enthusiastically loyal in their attachment to Her Majesty’s person and family, and are notorious for their adherence to British institutions; their trade connections with the United States’ citizens have not undermined their loyalty, nor persuaded them that better political institutions than their own exist elsewhere; and the Council submit that the policy of exclusion will lack one of the chief elements of success, if it does not obtain the moral support of the people for whose supposed benefit it is undertaken.”

I am glad to observe that my hon. friend opposite (Mr. Howlan) was one of the signers of that paper. It was worthy of him, born down by the sea and inheriting the broad views he possesses. I am sure that he will agree with me that it was the true policy for the Dominion to pursue.

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Hon. Mr. Dickey. ** They gave a notice at the earliest moment for the abrogation of that treaty, but with regard to the Reciprocity Treaty, the circumstances are somewhat peculiar and I may mention to the House how that treaty was annulled. It was not abrogated in consequence of any harshness or supposed injustice on the part of our Government, who were simply acting upon our treaty rights. During a portion of the time I believe my hon. friend from Ottawa was a member of a Government which held power for five years, and it is just to that Government to say that the abrogation of the treaty was in way due to any harsh conduct on their part but solely owing to the fact that notice was given by the United States Government to punish the people of this country for the sympathy they had extended toward the south in the unfortunate civil war. I am in a situation to give the very best possible evidence of that, because it became my duty some twenty odd years ago to proceed to Washington for the

purpose of endeavoring if possible to see if anything could be done to allow our Nova Scotia coal to be admitted on terms of reciprocity if nothing else would be. I had a letter of introduction to the late lamented Chas. Sumner who received me with the utmost kindness and consideration. In the course of our various conversations Mr. Sumner stated to me in the frankest manner: "Of course you know I am Chairman of the Committee on Foreign Relations and I can tell you that notice for the abrogation of the treaty was written with my own hand and I will tell you further it was done to punish your country for the sympathy you extended to the South in the late rebellion." That is a historical fact which I feel perfectly justified in stating in my place here although during the lifetime of that eminent man, whose premature death was a matter of regret to the whole civilized world, I felt it right to keep my mouth shut on the subject. I made no mention of it at all, except to my intimate friends in my own country, but it is a fact well known in Washington at this day that that was the sole cause of the treaty being abrogated. But for that fact, possibly it might have been in force today, and we should not have been troubled with these various controversies about commercial union and unrestricted reciprocity. We should have been living, no doubt, this day under the reciprocity treaty of 1854.

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(April 27.)

Hon. Mr. HOWLAN. * * * Now bear with me a moment while I describe to you a master of an American fishing-vessel. Probably his father had been a fisherman—and this description will apply alike to our Canadian fishermen or perhaps in a greater measure than to the United States fishermen—he has served his time before the mast of one of those fishing vessels until he has accumulated a little money, going to the Grand Banks and mackeraling in the summer. By his industry and temperate and careful habits he has so impressed a merchant that he is able to take care of a vessel that he is placed in charge of one, and all his earnings he puts into that vessel, owning perhaps one-sixteenth of it. That vessel is his home—his everything. It is not only his past and present, but it is his future. He knows that if he is successful in his voyages it advances him until he becomes owner of the vessel and is able finally to retire as he has seen others retire. I point this out to show you how careful these fishermen are not to get into trouble. After living for 30 years where a large number of American fishermen frequent during summer season I may say, and I do say it with due consideration—that taking any other body of men as they are I doubt if you will find any that are better behaved under all the circumstances connected with the matter, and when you find fault with those fishermen with whom are you finding fault? It is true that the navigation laws of the United States, which have not been repealed since they were passed in 1876, are very illiberal as compared with those of England. They require the master of a vessel and two-thirds of the crew shall be American citizens. Any man who has had anything to do with vessels in the United States will tell you that this law is almost in abeyance. It is not going too far to say that two-thirds of the men who manned the American fishing vessels are

Canadians, and that being the case, it is only another proof of the fact that we have a hardy school in which to train our fishermen.

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If a vessel flying the American flag comes in with cargoes of cotton or sugar she can buy whatever she wants. Now, they are allowed to come in and purchase not what a fishing vessel can buy, but necessary supplies to take her on her home voyage. Every vessel is allowed to come into the harbors of Canada without reporting to the customs official if she does not stay longer than 24 hours. At one time, such was not the case when we had light dues, harbor dues and other tolls to collect; but it is not so now. If an American fishing vessel comes in to buy supplies, she merely buys the necessities she requires, and goes away, and there is nothing more about it. Is it to be imagined that the masters of those vessels, who own them, and who have the earnings of a life time perhaps in one-fourth of the venture, will run the risk of losing his vessel for the purpose of doing what? Of trying to evade the law, knowing full well that behind them their own Government will not protect them in breaking the law—knowing full well that if they break the law their ship will be seized and confiscated. Still we are told that if we let those vessels come in for supplies that they should not be allowed to transship their cargoes.

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Hon. Mr. HOWLAN. * * * My hon. friend says if we lose nothing by giving the Americans this Treaty, why have we excluded them from these concessions since 1818? Well we have not excluded them. There was a treaty for ten years and that was extended for two years. Then we allowed them to come in under license and at last for nothing. We are told that we have given away a good deal. What have we given away? We have established an imaginary line as a fixed line of delimitation. That is one thing: there is no give away there. On the contrary we have increased our mileage and acreage of water.

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Hon. Mr. MACDONALD. * * * Now I am free to confess that I am in perfect sympathy with every hon. member who describes the treaty of 1818 as a disgrace to our country. There is no such treaty existing today between any two civilized nations. The treaty of 1783 was made when England was weak, when it was impossible for her to open the questions which would limit the fishing advantages of the American fishermen. The treaty of 1818 was made when she was strong, but what she had gained in strength she had lost in magnanimity. I contend that there is not an enlightened nation on the face of the earth today that could go to any other nation to make a treaty and say it shall consist only of these four clauses, viz:—to enter for wood, water, shelter and repairs. If there is any other classification as to what these clauses mean I cannot find it. I believe it is well understood that cases have arisen where vessels have gone into port for coal and have been refused simply because coal was not indicated in the Treaty.

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If this treaty of 1818 is so faultless, I am at loss to understand what great advantages we derive from parting with it, but it is only because I believe it to be a treaty, as the Secretary of State has de-

scribed it, full of inconsistencies and full of incongruities and constructions placed upon it which have led to constant strife and irritation, that I for one hail with delight the period when it shall pass away forever.

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Hon. Mr. HOWLAN. * * * If the Treaty of 1818 is, as I believe it to be, an unwise treaty, if the Treaty, as I believe it to be, is a treaty that does not do us credit; if the Treaty is such a treaty, as I believe in the advancement of that comity which has been prevalent amongst nations for so many years, it should have been abrogated long ago. Why should we seek the advantage, while removing that which is wrong to secure that which is good?

Hon. Mr. POIRIER. * * * The hon. gentleman from Halifax, in his remarkable speech said that if we had had three Commissioners like Sir Charles Tupper we would now have a different treaty. I would like to ask my hon. friend what sort of a treaty he would desire to have. We would have a different treaty: How? More stringent against the United States? More liberal? More protective of our fisheries? Or one that would give them away? But what was Sir Charles Tupper to do in the United States? Was he and his colleagues to take 65 millions of people and hand them over to us, hand and feet bound, with their president for us to destroy on the altar of our country? That was not their commission. They went there to arrange a treaty, and that treaty was to be nothing else but the treaty of 1818 applied to the present state of civilization and to our mutual present requirements. They did not go there to give every thing away nor to take in every thing; they went there simply to meet this cry of barbarity which does not in reality exist. Did they succeed? How was the treaty of 1818 to be modified in order to apply to the state of civilization that now exists? Supposing the Commissioners of 1818 were to sit now, how would they frame their treaty in order to protect us? I believe that the treaty as proposed to us here is just the treaty of 1818, but applied to our present status of civilization.

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(April 30th.)

Hon. Mr. POIRIER. Even in the face of treatment of that kind, which is unwarranted on the part of the Americans, we should respond by an act of generosity, and allow American fishermen to transship crews. I say they grant us their being restricted from entering any of our bays ten miles wide at the mouth. They held heretofore to the right of entering all our bays wider than six miles, that is they adhered to the three miles limit, strictly, according to the indentures and sinuosities of the shore. This the minister of England had practically conceded, not only in their despatches to Admiral Wellesley in 1870, but from the time the Americans were allowed the privilege of entering the Bay of Fundy, in 1845, when the limits were narrowed down to six miles. This was not a pretention, it was a privilege actually enjoyed. After 1845, the instructions from the British Government were positively that no American vessel should be seized or interfered with further out than three miles of the shore, nor outside of any bays six miles wide at the mouth. What does this treaty do? It takes away from them that privilege, and all our bays under ten miles in width are protected to

a distance of three miles out from that time. This is a great concession made by the Americans.

Hon. Mr. POWER. Will the hon. gentleman be good enough to let us have the authority for the statement so made.

Hon. Mr. POIRIER. I have not got the book or the page, but I have been reading the question over, and have jotted the points down in my notes as I read them.

Hon. Mr. MILLER. The authority is clearly given that England would not concede to our claim more than three miles from the coast. The instructions to Admiral Wolesley are the authority when he was commanding the American Station.

Hon. Mr. POIRIER. My hon. friend will admit my honesty in making this statement, for I have taken a note of it from official documents, though I have not noted the page.

Hon. Mr. McINNES (B. C.). Is it not a fact that the despatch merely allowed American vessels to enter without having any authority for doing so and for an indefinite time? There was no stated time, and that Order-in-Council could be reversed at the will of the British Government.

Hon. Mr. POIRIER. The proof that it could be reversed is that it is reversed by this treaty. The Americans will now have to abide by the convention of La Hague, which enlarges the width of bays which cannot be entered by foreign vessels to bays ten miles wide. We are under the same footing as the northern nations of Europe in that respect.

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(May 1.)

Hon. Mr. VIDAL. * * * I could show that other concessions in this Treaty are concessions of very little value to us and some of which ought unquestionably to be made, and while I do not accept the statement made by some hon. gentlemen that the Treaty of 1818 was a barbarous and outrageous treaty, I admit that it was not one that would be made in 1888. There has been such a growth of ideas, acknowledgment of rights of other nations, and increase of commercial intercourse, that I am quite well aware that the Treaty of 1818 is not suitable to the circumstances of 1888. Long before this Treaty was framed, I stated openly to people with whom I have conversed about it, that Canada's insisting upon some of the rights which were legally and literally hers under the Treaty of 1818, was demanding that which should be given up without any hesitation, because they were contrary to neighborly feeling, and were susceptible of being harshly used towards fishermen in trouble and distress.

Extracts from the Debates of the House of Commons of the Dominion of Canada, Sessions 1888.

SPEECH OF HON. J. S. D. THOMPSON ON THE BAYARD-CHAMBERLAIN TREATY.

April 10, 1888.

In a treaty which the hon. gentleman has been denouncing as a disgraceful surrender there is no miserable carping and quibbling over

these rights, there is no attempt to depart from the provisions contained in the Treaty of 1818, there is no pettifoggish attempt to evade that treaty, which, while it gave large territorial rights to the United States fishermen, preserved the rights of the British American people. Instead of denying our contentions on the points which I stated viz, as to the right to purchase those articles, the right to transship cargo and the right to ship a crew, it has been conceded that those rights are rights which are to be negotiated for and which are to be purchased on fair and equitable terms hereafter by the authorities of the United States. That surely is, if not a concession, at least an adjustment, on terms which are distinctly honorable to the people and the Government of Canada. Let me ask the hon. gentleman to consider whether the principles contained in the delimitation clause are not a fair concession on both sides. I meet his statement as to what our rights in regard to the headlands were by admitting that the doctrines which he referred to were the doctrines which were found in the text books and in the despatches down to 25 years ago. I admit that it was not contended then that we were limited in our territorial rights as regards bays, to bays merely of the width of ten miles. But the hon. gentleman knows that for upwards of thirty years that prohibition has not been carried out; it was abandoned by the hon. member for Northumberland (Mr. Mitchell), as well as by his successors in that department, who stated in every instance, that while asserting that they preserve and reserve the right, they in practice could not enforce it.

Mr. MITCHELL. Tell me why?

Mr. THOMPSON. I will tell the hon. gentleman why. When my colleague, the Minister of Finance, made the statement which I am doing but little more than repeating, the hon. member for Northumberland seemed to think that it was intended to cast some imputation on him as to his administration of the Department. Such is not the case. The reason why the hon. gentleman could not enforce the ten-mile limit was that Her Majesty's Government would not permit the Government of Canada to do so.

Mr. MITCHELL. Not denying our right, but State interests prevented them doing so.

Mr. THOMPSON. Declaring that they reserved the right and that it might be pressed at another time, but at that time refusing to allow it to be enforced. Why? The hon. gentleman says for State reasons. The principal cause was that to enforce that doctrine strictly, to the largest extent, would in all probability involve a collision between either Her Majesty's vessels and the fishing vessels of the United States or our revenue cutters and American fishing vessels. When the British Government declined, and perhaps wisely declined, to enforce that doctrine to its fullest extent in the interest of peace and harmony, of course neither the hon. gentleman himself nor any of his successors could venture to take the responsibility of enforcing seizures outside of the three-mile limit and therefore the statement did not impute blame upon the hon. gentleman nor did it in the least degree derogate from the strength of the argument. This right had not existed in practice for the last twenty-five years. Now, Sir, the hon. member for Queen's, P. E. I. (Mr. Davies), referred to

a despatch of Mr. Everett in which an expression was used slightly favoring the English doctrine as to the headland question.

Mr. DAVIES (P. E. I.). Mr. Webster, not Everett.

Mr. THOMPSON. Yes, Mr. Webster. The hon. gentleman cited that from memory to the House in words which I was careful to note.

Mr. DAVIES (P. E. I.). I read the quotation.

Mr. THOMPSON. The hon. gentleman did read it, but afterwards, in making his argument upon it, he cited it in these words: He said that "Mr. Webster had admitted that to be the proper construction of the treaty." Now, what Mr. Webster says was that "by a strict and rigid construction of this article that result might follow," but he declared in the concluding paragraph that the construction thus put on the treaty "is not conformable to the intention of the contracting parties."

Mr. DAVIES (P. E. I.). I beg the hon. gentleman's pardon, I read that. The hon. gentleman will permit me to say that the quotation he now makes appears in the first part, that it did not coincide with the intention of the parties and that the intentions of the parties are not expressed as they are intended in that treaty.

Mr. THOMPSON. I shall not say whether the hon. gentleman read it or not. I do not pretend to remember that, but I am glad to know that he is aware that those words, strongly qualifying the opinion, are in the despatch, and I am sure that after what I have said, if the honorable gentleman undertook to repeat it from memory again, he would not make the statement that Mr. Webster admitted that that was the proper construction of the treaty.

Mr. DAVIES (P. E. I.). Certainly I would.

Mr. THOMPSON. If the hon. gentleman says he would I shall not further attempt to argue with him. I said that with regard to this question of the headlands it was one of the cases in which there was a fair concession upon both sides. We gave up the extreme English contention; correct as I believe it to be, acquiesced in as it is by some eminent American authorities, and we need not quarrel about what Mr. Webster said, for the doctrine is supported by abler jurists than he is, such as Chancellor Kent, Judge Story and other men of that calibre. We need not quarrel about that. The question is how far the English doctrine was carried out in practice. When the hon. member from Northumberland (Mr. Mitchell) was at the head of the Fishery Department he issued instructions which did not go beyond the ten mile rule, nor was it necessary. There is no necessity in the protection of the fisheries of Canada that our cruisers should sail far out at sea molesting American vessels in places where mackerel are not caught or rarely if at all. The hon. gentleman defined his restriction to bays not more than ten miles wide, and the instructions, moderate as they were, had subsequently to be modified, and we were instructed only to enforce the exclusion as to bays six miles wide. Now the result of this treaty is that the construction which Canada asked, the construction which Canada proposed to put upon the Treaty of 1818, by the instructions which she desired to have issued but was not able to have enforced under the administration of the hon. member for Northumberland (Mr. Mitchell) is the construction adopted by the plenipotentiaries, only that they have enlarged it so as to give us some bays which are a great deal more than ten miles wide.

Extracts from the Debates of the House of Commons of the Dominion of Canada, 1889.

DEBATE ON THE INTERPRETATION OF TREATY OF 1818.

February 26, 1889.

* * * * *

Mr. MILLS (Bothwell.). There are many rules to be considered in the interpretation of a treaty. I do not say that hon. gentlemen opposite have put an improper legal construction on it so far as the mere bare interpretation of the words of the Treaty of 1818 are concerned, but we must read a treaty, not wholly by the light of events of 1818 but by the surrounding circumstances as they at this moment exist. The world has changed, society has progressed, there have been many inventions and many discoveries which have necessitated a change in the relations among independent states, and the Treaty of 1818 cannot be construed in every respect now as it was construed at the time it was entered into. Many of the provisions that the hon. gentleman has acted upon are justified solely as police regulations. They are not provisions of the treaty, but they are provisions which the construction of the treaty might authorize, if it can be shown they are necessary for the protection of those rights that were secured by the treaty. Under the Convention of 1818, the United States abandoned their pretensions to fish in certain British North American waters, but they retained the right to enter these ports for certain purposes specified, and agreed that they would not enter them for any other purpose whatever. The reasons for that provision, when we look at the protocols and at the correspondence that took place at the time, are easily seen. It was asserted on the part of the British negotiators that this interdiction was necessary for the protection of the fisheries, because if the Americans were permitted to enter for any other purpose except to obtain wood and water, or to escape stress of weather, they might fish on their way. It was therefore deemed necessary to have the power of excluding them for every other purpose. It is true that we have the power, but the question is whether we are justified in using it or not. That depends on whether it is necessary for the purpose for which it was given. If you can show it is no longer necessary this power should be exercised for the purpose of protecting the fisheries, then your right to exercise the power so far as the vexed question is concerned, is gone. I think the hon. gentleman will find at this time of the day it is pretty difficult to contend for a strict construction of the law. The hon. gentleman knows that the Minister of Customs and the Minister of Marine, who are largely responsible for the state of irritation that existed in consequence of what was done during the past three or four years, made these regulations, not for the purpose of preventing the Americans fishing in our waters, but as a matter of commercial policy, thinking that by imposing such restriction upon the American fishermen, the American Government, to secure the relaxation of those restrictions, would be disposed to enter into more favorable trade relations with us in respect of our fisheries than at that time existed. So hon. gentlemen will see that the object of the Government in making these regulations was altogether outside the Treaty of 1818. The Treaty of 1818 had nothing whatever to do with our trade with the United States, it had nothing whatever to do with securing us more extended trade relations with

the U. S., it had nothing whatever to do with securing the free admission of our fish into the ports of the United States; it had to do simply with the exclusion of the American fishermen from fishing within the waters which are recognised as being within British North American sovereignty. It was for that purpose, and for that purpose alone, that these conditions were inserted in that treaty, and it is in pursuance or in maintenance of this right that the exercise of these powers of exclusion can alone be justified. If I were to ask hon. gentlemen on the other side of the House whether it is possible to defend those restrictions as a matter of right for the purpose of protecting the fisheries, I apprehend that no hon. gentleman on that side would seriously argue that we could so defend them. They were imposed for another and a different purpose. If I were to ask, can the right of exclusion which it is attempted to apply to protect these fisheries be applied in any case where the fisheries are within our sovereign control and where the treaty does not extend, we would have a fair test to show whether there was a use or abuse of the treaty in the making of these regulations. No one, I apprehend, will argue that, in those waters of Canada where fish may be found, if American fishermen who were fishing in their own waters and were to come within our waters for any purposes, we would have the right to exclude them; and, if we would not have a right to exclude them in such a case, we would not have the right to do so under the Treaty of 1818, because that treaty was not intended to do anything more than to assert our sovereignty over certain waters, and that we had such rights as were necessary, in accordance with the usages of nations, for the protection of our fisheries in those waters.

Extracts from British Blue Book, France No. 1 (1890).

The Earl of Derby to Governor Sir J. H. Glover.

DOWNING STREET, June 12, 1884.

SIR: In my Despatch, of the 18th December last, I informed the Officer Administering the Government of Newfoundland of the appointment of Mr. Clare Ford, C. B., C. M. G., and Mr. E. B. Pennell as British Commissioners on the Commission to meet in Paris in connexion with the Newfoundland fisheries question.

These gentlemen, representing Her Majesty's Government, and M. Jagerschmidt and Captain Bigrel, acting on behalf of the Government of the French Republic, met in Paris on the 23rd January last, and the labours of the Commission were concluded at a meeting held on the 26th April, when an Arrangement was signed by the Commissioners.

I have now the honour to transmit to you a copy of that Arrangement,^[a] together with two inclosures accompanying it, which consist of a statement and map ^[b] referred to in Article 2.

[^a For note respecting this Arrangement, see foot-note on page 69, U. S. Case Appendix.]

[^b Reference is made to the map printed in British Blue Book, France No. 1 (1890), facing p. 23.]

You will observe that the Arrangement has been entered into subject to the approval of the Governments of Great Britain and France; and Her Majesty's Government will not intimate their approval until the Colonial Government and Legislature have had an opportunity of studying its provisions, and of considering the great advantages which it affords for a settlement of the long outstanding and difficult question of the fisheries.

Before proceeding to explain the details of the present arrangement, it may be convenient to recapitulate the provisions of the treaties bearing upon the question.

They are as follows:—

By article XIII. of the Treaty of Utrecht, 1713, it was agreed that "The island called Newfoundland, with the adjacent islands, shall, from this time forward, belong of right wholly to Britain, and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up within seven months from the exchange of the ratifications of this treaty, or sooner if possible, by the Most Christian King to those who have a commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter lay claim to any right to the said island and islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the river St. Lawrence and in the gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there." And by Article V. of the Treaty of Paris, 1763, that "The subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the island of Newfoundland, such as it is specified in Article XIII. of the Treaty of Utrecht, which article is renewed and confirmed by the present treaty (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the mouth and in the Gulf of St. Lawrence); and his Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulf of St. Lawrence on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said Gulf of St. Lawrence. And as to what relates to the fishery on the coast of the island of Cape Breton, out of the said gulf, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coast of the island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and everywhere else out of the said gulf, shall remain on the foot of former treaties."

And by Article VI. of the same treaty, "The King of Great Britain cedes the islands of St. Pierre and Miquelon in full right to His Most Christian Majesty, to serve as a shelter to the French fishermen; and His said Most Christian Majesty engages not to fortify the said islands; to erect no buildings upon them but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police." And by Article IV. of the Treaty of Versailles, 1783, that "His Majesty the King of Great Britain is maintained in his right to the island of Newfoundland and to the adjacent islands, as the whole were assured to him by the 13th Article of the Treaty of Utrecht, excepting the islands of St. Pierre and Miquelon, which are ceded in full right by the present treaty to His Most Christian Majesty." And by Article V. of the said last-named treaty that "His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in 50° north latitude; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape John, passing to the north and descending by the western coast of the island of Newfoundland, shall extend to the place called Cape Ray, situated in 47° 50' latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present article as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht." And by Article VI. of the said last-named treaty that, "With regard to the fishery in the Gulf of St. Lawrence, the French shall continue to exercise it conformably to the Vth Article of the Treaty of Paris." And by a declaration of His Britannic Majesty, dated the 3rd day of September, 1783, it was declared that "The King, having entirely agreed with His Most Christian Majesty upon the articles of the definitive treaty, will seek every means which shall not only insure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French during the temporary exercise of it which is granted to them upon the coasts of the island of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels.

"The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting in any manner the

French fishermen during their fishing nor injuring their scaffolds during their absence.

"The King of Great Britain, in ceding the islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations, and that the fishery between the said islands, and that of Newfoundland shall be limited to the middle of the channel."

And by a counter declaration of His most Gracious Majesty the King of France, dated the 3rd day of September, 1783, it was declared that "The principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace must have convinced the King of Great Britain that His Majesty has had no other design than to render it solid and lasting, by preventing as much as possible, in the four quarters of the world, every subject of discussion and quarrel.

"The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

"As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two Sovereigns upon this matter, it is sufficiently ascertained by the Vth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to day by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

"In regard to the fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party but to the middle of the channel; and His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen."

And by further Treaties between the said Great Contracting Parties, viz., by Article VIII. of the Treaty of Paris, 1814, it was agreed that "His Britannic Majesty, stipulating for himself and his allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, fisheries, factories, and establishments of every kind which were possessed by France on the 1st January 1792, in the seas, on the Continents of America, Africa, and Asia, with exception, however, of the Islands of Tobago and St. Lucia, and the Isle of France and its dependencies, especially Rodrigues and the Sechelles, which several Colonies and possessions His Most Christian Majesty cedes in full right and sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and sovereignty to His Catholic Majesty." And by Article XIII. of the said last-named treaty that "The French right of fishery upon the Great Bank of Newfoundland upon the coasts of the island of that name, and of the adjacent islands in the Gulf of St. Lawrence, shall be replaced upon the footing in which it stood in 1792." And by Article XI. of the Treaty of Paris, 1815, that "The Treaty of Paris of the 30th May, 1814, and the Final

Act of the Congress of Vienna of the 9th June 1815 are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty."

Under the provisions of these treaties the French have hitherto maintained that they enjoy—

1. An exclusive right of fishery on that portion of the coast of Newfoundland between Cape St. John and Cape Ray, passing round by the north of the island.

2. That all British fixed settlements, of whatever nature, on that portion of the coast are contrary to treaty.

The British Government, on the other hand, have maintained—

1. That British subjects have a right to fish concurrently with the French, so long as they do not interrupt the latter.

2. That the undertaking in the Declaration of 1783, to cause the removal of fixed settlements, referred only to fixed fishing settlements, and that fixed settlements of any other kind are not contrary to the declaration.

French fishermen have, moreover, been in the habit of fishing the rivers, and of barring them with nets or weirs, interrupting the free circulation of salmon, and thereby causing great injury to the salmon fishery.

The British Government, however, have always maintained that the French have no right to the fisheries in rivers.

The Government of France each year during the fishing season employ ships of war to superintend the fishery exercised by their countrymen, and in consequence of the divergent views entertained by the two Governments respectively as to the interpretation to be placed upon the treaties, questions of jurisdiction, which might at any moment have become serious, have repeatedly arisen.

Such being the provisions of the treaties, and the construction placed upon them by the Governments and subjects of the two countries, practical difficulties have naturally occurred, and it has become of urgent importance that they should be removed.

The colonists have for some years past been desirous of developing the resources of their country as regards mines, agriculture, and other industries, but have constantly been met with the objections of the French Government to their doing so, and the development of the Colony on that part of the coast of Newfoundland where the French enjoy treaty rights has been practically at a standstill, although rich mines are known to exist there, and the agricultural capabilities of the Colony are undoubtedly most valuable.

Your Government are aware that the present Commission is the eighth which has been appointed since the year 1846 for a settlement of the Newfoundland Fishery question, and it may be useful here to recapitulate briefly the various terms which have been proposed in the previous negotiations as a basis of settlement, in order to show distinctly how much more favourable to the Colony is the present arrangement as compared with the terms proposed on any previous occasion.

In the year 1844 the French Government proposed negotiations to be held in London, and previous to opening them it was determined to appoint a British and French Commissioner in Newfoundland to report upon the question.

Captain Fabvre, commander of the French naval station, and Mr. Thomas, President of the Chamber of Commerce at Newfoundland, were, in consequence, appointed by their respective Governments.

On the 30th July 1844 Mr. Thomas made his report to the Governor. In this report he suggested, with regard to the French claim of "exclusive rights," that the respective fishermen of both nations should be kept separate and distinct in their fishing places. He also suggested the extension of the French fishery limits to Belle Isle North, and made suggestions with regard to the sale of bait to French fishermen.

This report resulted in negotiations being held in Paris in the month of March 1846.

The British Commissioner, Sir A. Perrier, was authorised to offer, in exchange for the French cession of all rights between Cape Ray and Bonne Bay, the following concessions:—

Admission of *exclusive* right of fishery from Bonne Bay to Cape St. John, going round by the north.

Exclusive right of French fishery, drying, and curing at Belle Isle North.

Permission for English fishermen to sell bait at St. Pierre.

At preliminary conferences held in Newfoundland, these measures had nearly been agreed to by Mr. Thomas and Captain Fabvre; but Captain Fabvre was desirous of retaining for France, in addition to the exclusive rights above mentioned, her rights of fishing, curing fish, &c., at Cod Roy, Red Island, Port-à-Port, and Lark Harbour, and to acquire for the French a "concurrent" right of fishery on the coast of Labrador.

The instructions, however, to the French Commissioner did not admit of his negotiating on the above-mentioned principles, and as no new propositions were brought forward by the French Government up to the month of May 1847, the negotiations fell through.

On the application of the French Government in 1851 negotiations were renewed, Sir A. Perrier being again directed to proceed to Paris to act as British Commissioner, M. de Bon being appointed on the part of France.

The British Commissioner was instructed to invite proposals from the French Commissioner such as might form a starting-point in the negotiations.

M. de Bon accordingly proposed, on the part of France, to admit the right of British subjects to inhabit, the Bay of St. George, or, in other terms, to give up the exclusive right of fishery in that bay, to which they considered themselves entitled by the Treaty of 1783. In return for this concession he demanded:—

1. The right to purchase and fish for bait (herring and capelin) on the south coast of Newfoundland, without restriction.

2. The right to fish during two months of the year (without curing or drying on shore) on that part of the coast of Labrador situated between the Isles Vertes and the Isles St. Modeste, both included; and

3. The right of fishery at Belle Isle North, in the Straits, which the French Commissioner asserted was enjoyed by the French up to 1841, without any demur on the part of Great Britain.

The concessions demanded by the French negotiator were not considered admissible, and the British Commissioner, in order to over-

come the difficulties arising out of the claim of Great Britain to a concurrent right of fishery, suggested that the question would be best settled if the rights of the fishermen of the two nations were kept separate and distinct. In order to carry out this suggestion, he proposed that the French rights should be made exclusive as against British subjects from Cape St. John to some point on the western coast, such as Cape Verte (Green Point, to the north of Bonne Bay); the French, on the other hand, to renounce their right altogether on the remainder of the coast, which would be that part where the British had been in the habit of carrying on the herring fishery and other fisheries incidental to the requirements of a fixed population.

The French negotiator offered no objection to the plan of recognizing the French "exclusive right" on a diminished extent of coast; but he contended for the retention of a "concurrent right" on that portion of the coast on which their exclusive claim might be renounced, and for other advantages as well, such as admission, concurrently with British fishermen, to the fisheries of Labrador and North Belle Isle, and to the "bait fishery" on the southern coast, all of which, he maintained, were necessary, as an equivalent for admitting British subjects to a free "concurrent right" on the lower portion of the western coast.

The British Commissioner was disposed to accept the demands of the French so far as to extend the French fishery to North Belle Isle, and also to remove all restrictions on the purchase of "bait," on condition that the French should entirely renounce their rights between Cape Verte and Cape Ray; and in June 1855 he forwarded to the Foreign Office the above suggestions in the form of a counter proposal to those which had been made by France.

Mr. Labouchere, Her Majesty's Secretary of State for the Colonies, concurred in the adoption of the British negotiator's project of a "compromise" as the basis of negotiation to be offered to the French Government. It corresponded, he believed, with the views of the Colonial authorities; deprived neither nation of any advantage of real value; and there would only be a reciprocal abandonment of barren rights and useless or nominal restrictions; and he prepared a draft treaty which might be substituted for the whole of the existing engagements on the Newfoundland Fisheries question.

The negotiations were continued in the year 1856 by Captain Pigeard, who arrived in London in the month of July of that year, and by Mr. Merivale, the Under Secretary of State for the Colonies. The basis of these negotiations was founded upon the counter proposals made by Sir A. Perrier, and also upon the draft of the treaty proposed by Mr. Labouchere. The negotiations finally terminated by the signature of a Convention in London on the 17th January 1857.

According to the stipulations of this Convention, a printed copy of which is annexed, an exclusive right of fishery and the use of the strand for fishery purposes was conceded to the French from Cape St. John, on the east coast of Newfoundland, to the Quirpon Islands, and from the Quirpon Islands, on the north coast, to Cape Norman, on the west coast, in and upon the following five fishery harbours, namely, Port-au-Choix, Small Harbour, Port-au-Port, Red Island, and Cod Roy Island, to extend, as regarded these five harbours, to a radius of three marine miles in all directions from the centre of each

such harbour. On other parts of the west coast (the five harbours excepted) British subjects were to enjoy a "concurrent" right of fishing with French subjects, but French subjects were to have the exclusive use of the strand for fishery purposes from Cape Norman to Rock Point, in the Bay of Islands, north of the River Humber, in addition to the strand of the reserved harbours.

A "concurrent" right of fishing was also granted to French subjects on the coast of Labrador, from Blanc Sablon to Cape Charles, and of North Belle Isle.

With regard to the question of fixed establishments, the Convention of 1857 stipulated that no British buildings or inclosures should be erected or maintained on the strand reserved for French exclusive use. It was provided, however, that buildings which had stood for five successive seasons previous to the date of the Convention, without objection on the part of the French Government, should not be liable to removal without equitable compensation to the owners from the French Government. By the Convention a limited right of jurisdiction was conceded to the French, and French naval officers were to have the power to enforce the French exclusive rights of fishing by the expulsion of vessels or boats attempting concurrent fishing, in the case of there being no British cruising vessel in sight or made known to be present within a distance of five marine miles. French naval officers were likewise entitled to take such measures as occasion might require to put French fishermen in possession of any portion of the strand of which their exclusive use for fishery purposes was recognized by the Convention.

It will thus be seen that, according to the terms of the Convention of 1857, France would have obtained an *exclusive* right of fishery on the northern extremity and northeastern coast of Newfoundland, and also on five points on the western coast of the island.

This Convention did not come into force owing to the objections raised by the Government of Newfoundland.

In the year 1859 a mixed Commission, composed, on the part of Great Britain, of Captain Dunlop and Mr. Kent (Colonial Secretary in Newfoundland), and, on the part of France, of M. de Montaignac de Chauvance and M. de Gobineau, was appointed to verify facts connected with the infraction of the treaties; and at the close of that year the Commissioners furnished their Report, accompanied by recommendations which led to the reopening of negotiations in 1860.

The terms of a Convention, and of Joint Instructions to be given to the British and French naval officers on the Newfoundland station, were then agreed on, and are enclosed (Enclosure 3), but the negotiations fell through, mainly in consequence of the wording of Articles 4 and 15 of the Joint Instructions.

The 4th Article related to the punishment of offenders in fishery disputes, and the 15th Article had reference to the removal of such buildings on the French shore as might interfere with the French fishery, with regard to which it was found impossible to reconcile the conflicting views.

It may be useful to quote *in extenso* the latter article, as the use of one word in it contributed more than anything else to the failure of the negotiations.

It was to the following effect in the French version:—

“Toute construction qui sera élevée à l’avenir sans le consentement de la Commission des Pêcheries sera enlevée par l’ordre du Commissaire Britannique et sans indemnité, dans un délai de six mois de la notification qui en sera faite, si la place occupée par la dite construction est *requise* pour les besoins de la pêche Française.”

It was proposed to substitute the words: “faite par la Commission que la place occupée par la dite construction est *nécessaire* pour les besoins de la pêche Française.”

This alteration was proposed by the British Government in order to make the erections removable, not on a requisition from the French Government or its officer, but on notice from a Commission of which a British officer was a member. To this alteration the French Government objected on grounds with which it was difficult to deal, because they proceeded from an acknowledged difference of view between the two Governments. The British Government would, however, have been willing subsequently to waive their objections with regard to the wording of the 4th and 15th Articles of the Stipulations which were framed in 1860, and to accept the arrangement with some trifling modifications; but on the matter being referred to the French Government the proposal was rejected, nor did the French Government give any reasons for their refusal to accept it.

In the month of October 1874 negotiations were again renewed with the French Government, Captain (afterwards Admiral) Miller being appointed on the part of Her Majesty’s Government, and Captain de Boissoudy on that of France, and were continued, with various interruptions, during the course of the years 1875 and 1876, and, as you are aware, were not productive of any settlement.

In the course of these negotiations Her Majesty’s Government received the assistance of Sir F. Carter, Premier of Newfoundland, who was in England at the time.

The arrangement which was originally contemplated on this occasion was founded on resolutions, dated the 23rd April 1874, adopted by the Newfoundland House of Assembly, and concurred in by the Legislative Council, and it embraced the following stipulations:—

1. The establishment of a Joint Naval Commission to take cognizance only of such matters as related to the fisheries; and in case of disagreement, reference to be made to the respective Governments, all other questions to be dealt with by competent authorities.

2. That the existing British Settlements in St. George’s Bay, Cod Roy, and Bay of Islands, Bonne Bay, and White Bay should remain undisturbed, and no interruption to be made by the French to fishing by the British in those bays, nor interference with their buildings and enclosures there, nor with any erections or buildings on any part of the coast where the French enjoy a temporary right of fishery which did not actually interfere with the fishery privileges of the French, as should be determined by the Commissioners; nor were British subjects to be molested in fishing on any part where they did not actually interrupt the French by their competition.

3. That no building or enclosure which had been erected for five years should be removed as interfering with the French fishery privileges without compensation to be determined on by the Commission-

ers; but no compensation to be payable for any such building or enclosure hereafter erected without the consent of the Commissioners.

4. That the Commissioners should determine the limit or boundary line to which the French might prosecute their fishery, the British having the exclusive right of salmon and all other fishing in rivers.

5. That the breadth of strand of which the French should have the right of temporary use for fishery purposes should be defined; thus removing objections to grants of land for all purposes beyond the boundary so to be defined, and within the same for mining purposes; right being reserved to the British Government to erect on such strand works of a military or other public character, and to the British subjects for wharves and buildings necessary for mining, trading, and other purposes apart from the fishery in places selected with permission of Commissioners.

It was further recommended that the Colonial Legislature should state to Her Majesty's Government that they were not prepared to agree to any concessions to the Government of France which would convey to the French rights of fishery which they did not at present possess under existing Treaties; but that they would recommend the Legislature to consent that the valuable and important right to purchase bait, both herring and capelin, on the southern coast, should be conceded to the French at such times as British subjects might lawfully take the same upon terms which were to be agreed upon.

During the course of the negotiations which took place certain modifications of the above terms were introduced, which it is unnecessary to dwell upon here, inasmuch as the negotiations came to no result; but the above extracts have been quoted in order to show the nature of the arrangement which at that time was considered by the Government of Newfoundland as offering a satisfactory settlement of the fisheries question, and it is obvious that had an arrangement been entered into at that period on the above-quoted bases, it would have been far less advantageous to the interests of the Colony than the one which has now been signed by the British and French Commissioners in Paris.

A period of five years now elapsed before fresh negotiations, by means of a Joint Commission, took place. In the year 1881 a Commission was appointed, Admiral Miller being again the British Commissioner, and Admiral Pierre being named on the part of France.

During the negotiations Sir William Whiteway was in London, and was constantly consulted by Her Majesty's Government as the negotiations proceeded.

Draft Articles were drawn up by the British Commissioner, with the concurrence of Sir William Whiteway, which it was hoped would offer to the French Government a satisfactory basis for discussion, and lead to an agreement being arrived at between the Commissioners of the two respective countries for a settlement of the question.

The basis of this arrangement consisted in the appointment of a Commission, to be called a Commission of Demarcation, whose duty it would be to define and allot certain parts of the strand on which the French might exercise the rights conceded to them by Treaty, and the remainder of the coast to be released from Treaty stipulations; and it was contemplated to allot not more than one-half of any one harbour for the purpose of French use, and the amount of the strand inland was not to extend to a greater distance than one-third of a mile from high-water mark.

Moreover, in the allotments for French use there was to be reserved in each case to the British Government, a sufficient space for the erection of wharves, &c., and other public works or buildings, which, however, were not to be erected without previous consent on the part of the French Government.

It was further contemplated that all establishments or settlements existing at the time, British or French, were, under certain provisos, to remain undisturbed.

In addition to the appointment of a Commission of Demarcation, a Mixed Commission was to be appointed, which was to be named the Fishery Commission, and was to act in conformity with Joint Instructions based on the Articles of the Agreement.

The duty of the Fishery Commission was to see that neither British nor French fishermen were interrupted in their fishing operations.

The Fishery Commission was to have power to punish any person contravening its orders or decisions, either by means of fines or seizure of property.

The French were to be allowed to leave their boats, &c., during the winter months, and to erect dwelling-houses for their guardians, who might be either French or British.

The French were to be allowed to purchase bait, (both herring and capelin) on shore or at sea, on the southern coast of Newfoundland, at such times as British subjects might lawfully take the same, free from all duty or restriction not equally imposed on British subjects.

The French Commissioner, on being made acquainted with the substance of the draft Articles, reported at a meeting of the Commission that the French Government were unable to accept the arrangement embodied in them, stating that the principle of British and French occupying the same harbours and fishing-grounds could never be entertained.

It is not necessary to enter further on these negotiations, as they did not result in any agreement being come to.

On comparing the provisions of the various proposals enumerated above with those embodied in the present Arrangement, the advantages to the Colony offered by the latter will at once be seen.

The result under its provisions will be:—

1. That fixed settlements of every description will be allowed on the very extended portions of the coast which are tinted in red on the Map, with the exception of fishing establishments which Her Majesty's Government have never contended to be permissible under the Treaties.

2. That the claim of the French to an exclusive right of fishery will be withdrawn, as the Arrangement recognizes the concurrent right of British fishermen to fish everywhere on the coast between Cape St. John and Cape Ray, under the condition of not interfering with or molesting French fishermen when in the exercise of their fishing industry.

3. That the claim of the French to the right of fishing in rivers, except at the mouths, as far as the water remains salt, is withdrawn, and the practice of barring the rivers is prohibited.

4. That all fixed settlements, fishery or otherwise, at present existing within the limits of that portion of the coast over which the French enjoy Treaty rights, will not be disturbed.

In previous negotiations the subject of fixed establishments received the earnest consideration of the British negotiators, and it was, on more than one occasion, contemplated to appoint Mixed Commissions to assess the amount of compensation which should be paid to the owners of property whose buildings were to be removed.

However desirable such a course might have been, great difficulty would probably have been experienced in carrying it into effect, and it might have given rise to many vexatious and complicated questions.

No such inconvenience can result under the very satisfactory provision of the present arrangement dealing with this branch of the subject.

In return for the advantages to the Colony above enumerated, Her Majesty's Government would, under the present Arrangement, recognize little more than the *de facto* state of things existing as regards the acts of authority exercised every fishing season by the French cruisers in the waters over which the French Treaty rights extend, and the exercise of these acts on the part of French cruisers would only take place in cases of infraction of the very reasonable provisions of this Arrangement, and then only in the absence of any of Her Majesty's cruisers.

I may here observe that a Convention, a copy of which is inclosed, was signed in 1881 at The Hague by the Representatives of certain Maritime Powers for the regulation of the fisheries in the North Sea. This Convention contains very useful provisions for the orderly prosecution of the fisheries in common by fishermen of different nationalities, and some of its provisions have been considered applicable to the case of the Newfoundland fisheries.

The stipulations of the North Sea Convention no doubt apply to waters which are not territorial, still the peculiar fisheries rights granted by Treaties to the French in Newfoundland invest those waters during the months of the year when fishing is carried on in them both by English and French fishermen with a character somewhat analogous to that of a common sea for the purposes of fishery. It could not be expected that the French would give up in favour of the development of the Colony the interpretation they place on the Treaties, without obtaining in return some equivalent by which they will in the future be better able to secure for their fishermen the full enjoyment of their fishing industry, and it appears to Her Majesty's Government that little inconvenience is likely to result from the exercise of the limited right accorded to French cruisers by the present Arrangement.

The French Government have invariably maintained that the establishment of a fixed population on any portions of the coast on which they enjoy Treaty rights must result in their ultimate exclusion from those spots, through French fishermen being virtually debarred from enjoying the free and uninterrupted exercise of the fishery rights accorded to them; and they instance the cases of the Bay of St. George on the west coast and of Conche on the east coast, where such a condition of affairs has arisen.

In agreeing, therefore, to the opening of all those extensive portions of the coast tinted red on the Map to a fixed population, the French Government naturally, and, in the opinion of Her Majesty's Government, not unreasonably, ask in return that they may be enabled

to exercise, in cases where none of Her Majesty's cruisers may actually be present, such an amount of supervision as may insure an uninterrupted enjoyment of the fisheries by their countrymen in these waters.

Any inconvenience which might possibly be entailed by this arrangement would be obviated, if necessary, by a closer supervision being exercised on the part of Her Majesty's cruisers of those portions of the coast where the cruisers of the French navy may be stationed, and, indeed, it is contemplated that two of Her Majesty's cruisers should in future cruise more especially off the northern portion of the coast, where the French are in the habit of carrying on their principal fisheries.

It will be further observed that the fishery rights of the British are not in any way curtailed, but are, on the contrary, strengthened, their right of concurrent fishery being, as already pointed out, now recognised by the French.

In conclusion, I have to inform you that Her Majesty's Government have thought it desirable that the British Commissioners who attended the Commission in Paris should proceed to Newfoundland, in order to offer any explanations of the present Arrangement which your Government may desire to receive; and Her Majesty's Government confidently trust that your Ministers will view the arrangement in the same light as that in which it is regarded by Majesty's Government, namely, as being a most advantageous one to the interests of the Colony, and as affording a means of avoiding the recurrence of those irritating questions which have so constantly arisen in connexion with the Newfoundland Fisheries question, and, moreover, as greatly diminishing the risk of any conflicts between the fishermen of the two nations.

The British Commissioners will sail for Newfoundland on the 17th instant, and will present this Despatch to you on their arrival.

Her Majesty's Government would be gratified if your Ministers should find it in their power to convene a special meeting of the Legislature as soon as may be possible, in order that the necessary Acts may be passed to give effect to those portions of the Arrangement which require legislative action, so that its provisions may be brought into operation at as early a date as possible.

I have, &c.

(Signed) DERBY.

Sir JOHN GLOVER.

Governor Sir J. Glover to the Earl of Derby—(Received July 24.)

GOVERNMENT HOUSE,
St. John's, Newfoundland, July 16, 1884.

MY LORD: At a Council held this morning I had laid before me the accompanying Minute upon which my Ministers have agreed in regard to the Convention signed at Paris on the 26th April, 1884, by the English and French Commissioners.

2. Your Lordship will observe that my Ministers desire two modifications in the proposed scheme, namely, facilities for the export of minerals from harbours not tinted red on the Map; and that the French guardians should be limited to one family in each harbour.

I have, &c.

(Signed) JOHN H. GLOVER.

[Inclosure.]

Extract from Minutes of Council, July 15, 1884.

The Council have had under consideration the Arrangement agreed to by Messrs. Ford and Pennell, Commissioners appointed by Her Majesty's Government, and by M. Jagerschmidt and Captain Bigrel, on the part of the Government of France, with regard to the Newfoundland Fisheries question, together with a despatch, dated the 12th June, 1884, of the Right Honourable Secretary of State for the Colonies to his Excellency the Governor on this subject.

The Council appreciate the endeavors of Her Majesty's Government to effect an arrangement for the prevention of the difficulties periodically recurring between the fishermen of both nations.

It is to be regretted that Her Majesty's Government have not been enabled to secure to British subjects to the full extent those rights for which the Government of Newfoundland have contended, and which are set forth in the Resolutions adopted by the Local Legislature, dated the 23rd April, 1874, to the principles of which Resolutions the Council still adhere.

Reciprocating the solicitude of Her Majesty's Government for the attainment of the object in view, the Council confide in the assurance of the Right Honourable Lord Derby, in his despatch above quoted, that under the proposed Arrangement the claim of the French to an exclusive right of fishery is withdrawn, and the concurrent right of British fishermen recognized to fish everywhere on the coast between Cape St. John and Cape Ray, provided they do not actually interfere with or molest French fishermen in the exercise of their fishing industry.

With regard to complaints and offences, the adjudication of which would rest solely with the Commanders of French cruizers, the Council must rely upon an equitable construction being applied to the terms of the Treaties; and they trust that vigilant exercise by the British cruizers of the powers conferred on them, sustained by Her Majesty's Government, will insure to British subjects the full enjoyment of those privileges contemplated by the proposed Arrangement. In a word, the Council feel assured that the whole proposition will be carried out in the spirit of equity and mutual consideration essential to its success.

With these views the Council would respectfully urge that the following modifications may be effected, in such manner as Her Majesty's Government may deem best adapted to the attainment of the ends desired.

An erroneous estimate appears to have obtained of the value of that portion of the coast tinted red on the Map accompanying the present proposals. Although this extent of coast is apparently open to British occupation, yet that portion between Bonne Bay and Cat's Arm in White Bay is impossible of settlement, inasmuch as the harbours and landing-places within these limits are practically reserved for the use of the French. It is believed that in the vicinity of some of these harbours there are valuable mineral deposits, and unless means of ingress and egress are afforded, such deposits cannot be worked. The present Arrangement should therefore contain a provision allowing of the erection of wharves and buildings necessary

for working and shipping purposes in these harbours. Such erections could not interfere with or incommode the fishing operations of the French. The sites to be determined by the British and French Commanders of cruizers on the coast.

Article XVII appears to be objectionable on the ground that it would operate as a basis for the formation of the permanent settlement of a French population on the coast. The guardians indicated should be limited to one French guardian and his family for each harbour, for the purpose of taking care of French property during that period of the year when the French, by Treaty, are to be absent from the coast.

The Council are convinced that the Legislature, as well as the Executive, in entering upon this important question, will be animated by a desire to meet as far as possible the views of Her Majesty's Government regarding a satisfactory settlement, and they believe that the acceptance of the modifications above suggested would tend materially to commend the arrangement to the favourable consideration of both Houses.

The Council regret that under present circumstances the holding of a Session of the Legislature before the usual period of the year would be attended with such difficulties and inconveniences that they are obliged to deem it inexpedient, and feel unable to meet the desire of Her Majesty's Government in relation to this matter.

(Signed) E. D. SHEA,
Clerk, Executive Council.

Governor Sir G. Des Vœux to Earl Granville.

GOVERNMENT HOUSE,
Newfoundland, April 27, 1886.

MY LORD: I have the honour to inform your Lordship that a meeting of the Executive Council was held here yesterday, Mr. Pennell being present, at which I brought under notice the subject of the recent Arrangement between the Governments of England and France with reference to the fisheries of the Colony.

2. By way of introduction to the discussion which ensued, I gave a short summary of the circumstances which had led up to the present juncture. I said that Her Majesty's Government, with an anxious desire to settle once and for all a question which may be said to have been pending for more than a century, and which had frequently threatened serious international complications, after doing all that was practicable to ascertain the views of the colonists, and after prolonged negotiations with the Government of France, had at length concluded a provisional Arrangement with that Power in April 1884. In order to consult the Colonial Government, and with a view to obtain clearly and finally the opinions of those most interested in the details of the arrangements, Her Majesty's Government had subsequently dispatched to the Colony the two Special Commissioners, who had ably conducted the negotiations on behalf of Great Britain. On the conclusion of their mission here, the then Executive Government of the Colony, by their Minute dated the 15th July, 1884, indicated

their general approval of the Arrangement, and by suggesting certain modifications, gave it to be understood by implication that if these were obtained they would be prepared to give the Arrangement their support when brought before the local Legislature for final confirmation. After further negotiation with the Government of France the modifications in question had been substantially conceded, and it was naturally supposed that the Arrangement in its amended form would receive the full and loyal support of the Government of this Colony. Her Majesty's Government had naturally taken it for granted that there would be no departure here from what was a leading principle of responsible government in England, namely, that by which the successors of an Administration carry out its undertakings with the outside world, even when opposed to their own views of expediency. They could not have supposed beforehand that a change in the personnel of the Government would make any difference in the obligation to support the Arrangement, and it was therefore with much surprise and very great disappointment that they had learned of the present difficulty, which apparently threatened to nullify the Arrangement, and to render futile all the pains and labour which had been devoted to it.

In the earnest hope of overcoming this difficulty I would now ask them to state to me the objections which they took to the Arrangement; for while I was already aware of their general nature, it was desirable that I should have them before me officially.

3. In response to this invitation the Premier, Mr. Thorburn, after mentioning several minor objections, which were evidently regarded as of comparatively little importance, finally brought forward the principal one, which is in reference to the XVIIth clause, on the subject of the bait supply.

4. The representations made on this subject by him and other members were in effect these: That the bounties granted in aid of their fishermen by the French Government, together with the unfair advantage possessed by them not only in France but in the important market of Spain, were threatening serious disaster to the most important industry of the Colony, which was already in so depressed a condition that a large number of the people were in a condition of great distress and suffering; that there was a general belief among the people of the Colony that in withholding or checking the supply of bait there was a ready means of contracting this advantage on the part of their competitors, and they were therefore unwilling to give up what was regarded as the key of the position and the only available means of saving themselves from ruin. It was also urged that the feeling was so generally prevalent and so deeply rooted that it would be quite impossible for any Government to carry through the Legislature the Arrangement in question while it contained this Bait Clause, even if objections on other points were overcome. I further gathered from what was said that at the date of the favourable Minute of the former Government, the market price of fish was much higher than now, and the bounties were therefore comparatively little felt; but these now amounted to nearly 50 per cent. of the present reduced price, and thus gave an advantage against which competition could not be sustained.

5. In reply, after answering in detail the various minor objections which had been raised, and showing as regards the subject that every

one of the colonists of Newfoundland would be in a better position than they were now even under the most favourable interpretation of the Treaties and the Declaration of His Majesty King George III, I then urged the following considerations with regard to the views expressed on the subject of the supply of bait:—

That Her Majesty's Government not only on various former occasions, but quite recently, had expressed its inability to sanction any measure prohibiting the sale of bait to the French, and there was not the least probability of this determination being in any way modified.

That apart from the unfriendliness of any other course with regard to a nation with which we were on terms of amity, this policy was clearly the wisest, even in the interests of Newfoundland itself.

Some thousands of the people of the Colony were almost entirely dependent for subsistence on the supply of bait to the French, so that the prohibition proposed would inflict upon them a ruinous injury, apart from the serious loss to the Colony of the 40,000*l.* to 50,000*l.* which is in this way annually added to the resources of the community. But great as this evil would be, it would be a comparatively trifling one compared with other results likely to follow an act of such unfriendly nature. It could not for a moment be supposed that the French Government would allow an industry to be destroyed which they had so frequently shown themselves to regard as of vital importance to the maintenance of their navy. It was admitted that even if the proposed prohibition was permitted, and was capable of being practically enforced, the French fishermen would be able to obtain all the bait they required from Treaty waters from the 20th April, and it was obvious that any disadvantage under which they would labour owing to this delay of about three weeks could be compensated by an addition to the bounty.

If this addition were to be only sufficient to place the fishermen in the same position as they were before the prohibition, the object of the latter would be entirely defeated, not to mention the harm done in embittering the relations of two peoples whose friendship was even more desirable here than elsewhere owing to their interests being brought so much in contact.

There was, however, a very great danger, indeed there was a very high probability, that the immediate result of such an ill-advised measure would be worse than this. Impelled by a desire not only of advancing the interests of their navy, and of their own people, but of bringing retribution upon a foreign Colony which had endeavoured to injure them, the French Government would in all probability make a larger addition to the bounties than that indicated, and in that case the industry of the British fishermen would, it was scarcely necessary to say, be destroyed altogether. For these reasons it was easy to see that the determination of Her Majesty's Government to permit no bait prohibition measure was not a merely arbitrary one, and dictated solely in Imperial interests, as was sometimes supposed, but was really and truly for the best interests of the Colony; and whether this was so or not, its very existence rendered futile the objection to the Bait Clause, while insistence upon this objection placed in serious peril the conclusion of an Arrangement which in all other respects was without any question very greatly to the advantage of the Colony.

For whatever might be the proper interpretation of the Treaties, the evils which had resulted from the standing doubts on the point

had been practically as great as if the French view of them had been actually accepted.

By the acceptance of this Arrangement all of the most serious of these evils would come to an end, and leaving the Bait Clause out of consideration, all the other concessions under it were distinctly to the advantage of British interests.

On the other hand, beyond the gain which was shared by both nations in the settlement of a matter of long-standing dispute, the only advantage accruing to the French was the recognition of a right to purchase bait, which they had always enjoyed in practice. The French could not be expected to give up everything and to gain nothing in return, and the recognition, even if it were a greater disadvantage to us than it is, would be immeasurably outweighed by the removal of obstructions to the opening up of the Colony, and the other benefits accruing from the Arrangement. But, for reasons before given, the Bait Clause did not involve any disadvantage which was not likely to be suffered in much greater intensity if the sale of bait were prohibited; so that, in fact, in every single respect their interests pointed to the confirmation of the Arrangement as the best course open to them.

6. Finally, after describing the serious results which were likely to follow the rejection of the proposed Arrangement, which it is unnecessary to specify more particularly here, I pointed out the extremely difficult position in which Her Majesty's Government would be placed, as regards the Government of France, if the present Administration of Newfoundland were to fail to fulfil the obligation with regard to this Arrangement which had been incurred by their predecessors in office, and I urged in the strongest manner that both the credit and interest of Newfoundland required their loyal support to a Convention to which they would be regarded by the outside world as practically pledged.

7. Without going so far as to say that the members were convinced by what had been said, it was clear that it had considerable effect upon them; but it was also equally evident that the consideration uppermost in their minds was the impossibility of inducing a majority of the Members of the Legislature to take a view such as that which had been presented, strongly biassed as they were in the contrary direction, and at the same time stimulated to opposition by the violent language of the press, which in this respect, no doubt, represents the general opinion of the public.

8. The only immediate outcome of the meeting, therefore, was the adoption of a suggestion of the Premier that Mr. Pennell should be present at the next meeting of the Parliamentary Committee which was considering the Arrangement, when he would have the opportunity of urging upon them the views which I had expressed.

9. My own attendance before the Committee, which was also suggested, did not appear to me advisable as being likely to defeat its object. For, however careful my language might be, it would be difficult to avoid the appearance of dictation, which, on the part of a Governor of a constitutionally-governed Colony, there is usually a not unnatural tendency to suspect and resent.

10. Judging from what I heard at this meeting, and from the opinions of colonists expressed elsewhere, I entertain but a very

faint expectation that the Arrangement will be confirmed in entirety this Session.

11. If complete confirmation should prove to be out of the question, I propose to use every effort to obtain the approval of all the other Articles of the Arrangement, the Bait Clause being reserved for future consideration; and at the worst I can scarcely doubt of securing postponement of the whole question, which, however undesirable, would be better than absolute rejection of the Arrangement.

12. If the Government of France would consent to accept the undertaking of the British Government that sanction would never be given to any local bait sale prohibition measure, it appears to me, and in this Mr. Pennell agrees, that the Bait Clause might with advantage be omitted.

In that case I should have good hope of the confirmation of the Arrangement by the Legislature, and I should have no doubt on the point if, at the time the decision of the Members was asked, I was able to announce that Her Majesty's Government had obtained, or was certainly about to obtain, from the Spanish Government, the concession of most-favoured-nation treatment to British imports, thus relieving the products of this Colony from the very serious disadvantage under which they are now placed as compared to the French.

May 1, 1886.

13. Since the above was written Mr. Pennell has had two interviews with the Committee, and though he, I understand, made able use of all the arguments which his unsurpassed knowledge of the subject places at his disposal, they were, I fear, unavailing, as the minds of Members are evidently quite fixed in opposition to the Arrangement.

14. While I deeply regret this result, I cannot say, my Lord, now that I know all the circumstances, that I am altogether surprised at it.

15. The colonists believe that they are being ruined by the French, and they regard a measure of bait sale prohibition as the only means of escape. They recognize the probability of its disallowance by Her Majesty's Government, but say in fact that while their destruction is perhaps inevitable in any case, they must decline to commit suicide. If the market price of the colonial products were to rise, or if some substantial modification were to take place in respect of the advantages now possessed by the French, this rigid attitude would probably be modified; but in the absence of any such change in the situation, I fear that the attempt would be hopeless to obtain the consent of the Colony to any arrangement such as that proposed.

I have, &c.

(Signed) G. WILLIAM DES VŒUX.

Colonial Office to Foreign Office—(Received July 7.)

DOWNING STREET, July 6, 1886.

SIR: With reference to my letter of this day's date on matters relating to the Newfoundland Fishery question, I am directed by Earl Granville to submit to you, to be laid before the Earl of Rosebery, a

copy of a despatch from the Governor of Newfoundland, inclosing copy of "An Act to regulate the Exportation and Sale of Herring, Capelin, Squid, and other Bait Fishes," together with a copy of a further despatch inclosing the Attorney-General's Report on the Bill, with a Petition from both Houses of the Legislature praying that the Bill may not be disallowed.

As the Governor has reserved the Bill, and the operation of it is in any case by clause 8 postponed until the 31st day of December next, no immediate decision is required upon it, and time will be afforded to see whether any arrangement can be come to with the United States' Government as well as with that of France on the fisheries questions.

Lord Granville, however, is inclined to think that the colonists make out a strong case for the allowance of the Bill.

It has hitherto for many years past been the policy of Her Majesty's Government to resist any attempt on the part of the colonists of Newfoundland to interfere with the sale of bait to the French, as the French Government, as Lord Rosebery is aware, attach the greatest importance to their fishermen being able to obtain bait on the south coast of the island for the prosecution of the Bank fisheries, and they would, no doubt, regard as a very hostile act any interference with what has been the practice for years.

The late Duke of Newcastle, when Secretary of State for the Colonies in 1863, informed the Governor, in a despatch dated 3rd August in that year, that "no Act could be allowed which prohibits expressly or is calculated by any circuitous method to prevent the sale of bait;" and recently, when it was known that the Fishery Arrangement of 1885 was being unfavourably received in the Colony, Lord Granville stated in a telegram to the Governor that "Her Majesty's Government could not consent to any measure restricting sale of bait to the French." This message was read to the Committee of the Legislature who were considering the Fishery Arrangement, when Mr. Pennell, of this Department, recently met them in St. John's, but it is in Lord Granville's opinion a question requiring consideration whether, now that the French Government are threatening to carry out the Treaties according to their extreme views, this position of Her Majesty's Government may not be changed and the prohibition of the sale of bait be permitted, unless the French Government are prepared to abolish or to substantially reduce the bounties.

Before, however, coming to any conclusion on this matter, Lord Rosebery will probably think it desirable to await the arrival of the Delegate expected from Newfoundland, and the discussion of the whole question proposed in the letter from this Department already referred to.

I am, &c.

(Signed)

ROBERT G. W. HERBERT.

Count d'Aubigny to the Earl of Idlesleigh—(Received September 21.)

LONDON, September 20, 1886.

MY LORD: A decree of the Newfoundland Government, dated the 9th August last, has prohibited lobster fishing for three years, from

the 30th September next, in Rocky Harbour (Bonne Bay, "French Shore").

I am instructed to inform your Excellency that, in view of the fishery right conferred on France by the Treaties in the part of the island to which the Decree applies, a right which can evidently not be restricted in its exercise, it is impossible for my Government to recognize in any way the validity of the measure taken by the Newfoundland authorities.

I have, &c.

(Signed)

L. D'AUBIGNY.

Captain Le Clerc to Captain Hamond.

[Translation.]

"CLORINDE" (off Sydney), September 22, 1886.

SIR: I have the honour to acknowledge the receipt of your letter of the 13th September dispatched from the "Emerald" at Port Saunders.

I thank you for the measures which you have kindly taken with reference to the lobster factories at Bluff Head and at Shag Island anchorage at Port-à-Port.

I cannot, however, allow your letter to pass without drawing your attention to your failure to distinguish between the annoyance caused to our fishermen by the presence of those factories and the manner in which their working is conducted. When I requested you to suppress them, I had at first in view the evident violation of the rights of France by certain of your countrymen, who have not even the excuse of being citizens of Newfoundland, since, with the exception of one only, all the manufacturers are from Prince Edward Island, or from Nova Scotia. In the second place, I desired to draw your attention to the disastrous consequences to the fishery caused by the carelessness and unrestrained manner with which the British fishermen carry on their illegal industry.

These acts have been repressed by your exertions, and it is a step for which I thank you; but I shall not cease to demand from you, and consequently from Her Britannic Majesty's Government, the closing of these establishments.

They tend in fact to multiply in a manner dangerous for the future, and the sufferance accorded them by the Government of St. John's may lead to the most unpleasant consequences.

You are probably aware that our people, by reason of the attitude taken by the St. John's Parliament on the subject of the sale of bait, will soon be compelled to make use of the Bay of Port-à-Port, to fish there themselves for that which they were in the habit of buying from British fishermen on the south coast of Newfoundland. It follows from this circumstance that, if these factories are still working next year, their existence, besides being contrary to the terms of the Declaration of His Majesty King George, would certainly lead to disputes. It is my duty to draw your attention to this.

This question of factories at Port-à-Port leads me to mention the Decree made by the Colonial Secretary, Mr. Fenelon, a Decree prohibiting lobster fishing for three years at Rocky Harbour.

I think it right to let you know that I am giving orders to vessels of my division to take no notice of a Decree which regulates a fishery the enjoyment of which belongs only to France. The Colonial Secretary has no right whatever to give to or take from the British residents established on the Newfoundland coast, between Cape Ray and Cape St. John, passing by the north, any right whatever, when such right concerns the fishery, and I am convinced that my Government takes the same view of the question.

I am, &c.

(Signed)

F. LE CLERC.

The Earl of Iddesleigh to M. Waddington.

FOREIGN OFFICE, *October 28, 1886.*

M. L'AMBASSADEUR: With reference to Count d'Aubigny's note of the 20th ultimo on the subject of a Decree passed by the Government of Newfoundland prohibiting lobster fishing in Bonne Bay for three years from the 30th ultimo, I have the honour to state to your Excellency that this Decree has not been received by Her Majesty's Government, but that the Governor of Newfoundland has been requested to send home a copy of the document.

I have, &c.

(Signed)

IDDESLEIGH.

Mr. Stanhope to Governor Sir G. Des Vœux.

[Extract.]

DOWNING STREET, *October 30, 1886.*

I have the honour to transmit to you a copy of a note received through the Foreign Office from the French Chargé d'Affaires at this Court, in which he gives notice on behalf of his Government that they cannot recognize the validity of a Decree recently passed by the Government of Newfoundland prohibiting for three years the fishing for lobsters in Bonne Bay.

I would be glad to be furnished with a copy of the Decree.

It would be advisable that any Decree or Order affecting the fisheries on the west and north-west coasts of Newfoundland should contain a clause reserving French rights under Treaty.

Colonial Office to Foreign Office—(Received December 23.)

DOWNING STREET, *December 22, 1886.*

SIR: With reference to your letter of the 27th September last, and to the reply from this Department of the 25th October, respecting an order issued in Newfoundland prohibiting for three years, with certain reservations, the fishing for lobsters in Bonne Bay, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the

Earl of Iddesleigh, copy of a despatch from the Governor of Newfoundland, with its inclosure, on the subject.

It appears to Mr. Stanhope that it would be unadvisable to make any further communication to the French Government on this matter until the views of the Governor's Ministers, which may be expected, are received.

I am, &c.

(Signed)

JOHN BRAMSTON.

[Inclosure No. 1.]

Governor Sir G. Des Vœux to Mr. Stanhope.

GOVERNMENT HOUSE,
Newfoundland, November 24, 1886.

SIR: In accordance with your instructions, I have communicated to my Ministers your despatch of the 30th October, 1886, with reference to the lobster fishery on that part of the coast of Newfoundland where the French have fishing rights. I herewith inclose copy of the Order in Council made under "The Lobster Act, 1878," which is probably the "Decree" referred to in the representation from the French Government, and, though I have as yet had no communication from my Ministers on the subject, I may mention at once that there was never any intention of enforcing this Order against French subjects.

After my Ministers have had time to consider your despatch above referred to, I should probably have occasion to address you further on this subject.

I have, &c.

(Signed)

GEO. WILLIAM DES VŒUX.

[Inclosure No. 2.]

Order in Council made under "The Lobster Act, 1878."

Upon representation from the inhabitants of Rocky Harbour, Bonne Bay, setting forth the evil which will result to them from an unrestricted taking, in that harbour, of lobsters, upon the supply of which they are dependent at certain seasons for bait for the cod fishery, and upon report of the Magistrate at Bonne Bay, verifying the said representation:

It is ordered that from and after the 30th September next, and for a period of three years therefrom, no lobsters shall be taken in the said Rocky Harbour, except for the purpose of bait, under a penalty not exceeding 100 dollars; but nothing in this Order contained shall prevent any person in the said harbour from catching or taking lobsters for food for himself and family.

And all Customs officials, Magistrates, and constables are hereby required to be aiding and assisting in the effectual carrying out of this Order, and enforcing the prohibition, regulation, and restriction herein contained.

(Signed)

M. FENELON,
Colonial Secretary.

SECRETARY'S OFFICE, August 9, 1886.

Colonial Office to Foreign Office.—(Received February 14.)

DOWNING STREET, February 12, 1887.

SIR: A letter has been received in this Department from the Admiralty, dated the 15th January last (and it is understood that a similar letter has been addressed to the Foreign Office), inclosing a copy of a letter, dated the 11th December, from the Commander-in-chief on the North America and West Indies Station, with inclosures, relating to certain matters connected with the Newfoundland fisheries.

The questions bearing upon the use of cod-traps and the establishment of lobster factories referred to in these papers are, in the opinion of Sir Henry Holland, sufficiently disposed of for the present by the despatch which was on the 11th instant addressed to the Governor of Newfoundland.

It will be observed that Captain Le Clerc, in his letter addressed to Captain Hamond, of the "Emerald," dated the 22nd September last, referring to an Order prohibiting for three years the taking of lobsters in Bonne Bay, takes a more comprehensive view of the French rights on the Newfoundland coasts than did Count d'Aubigny in the note which he addressed to the Secretary of State for Foreign Affairs on the 20th September last. Count d'Aubigny appears to found his complaint on the fact that the French right of fishery cannot be limited by a Colonial Decree; but the position taken by Captain Le Clerc is tantamount to a denial of the right of the Colonial authorities to issue any Decree binding upon British subjects on matters concerning the fisheries on that part of the coast to which the French rights of fishery extend. As this ground, however, is not taken by the French Government, Sir H. Holland does not think any notice need be taken of Captain Le Clerc's observations; the French Government would, no doubt, be satisfied on receiving an assurance that the Order in question will not be enforced against French subjects.

On this point I am desired to inclose copy of a despatch which will be addressed to the Governor by the next mail.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

[Inclosure.]

Draft of Despatch to Governor Sir G. Des Vœux.

DOWNING STREET, February 12, 1887.

SIR: In his despatch of the 29th October last my predecessor communicated to you a note received from the French Chargé d'Affaires at this Court, giving notice on behalf of his Government that they could not recognize the validity of an Order passed by the Government of Newfoundland prohibiting for three years the fishing for lobsters in Bonne Bay.

In your reply of the 24th November you stated that after your Ministers had had time to consider the despatch in question, you would address the Secretary of State further upon the subject, and you mentioned that there was not any intention of enforcing the Order against French fishermen.

I should be glad to receive from your Ministers a formal assurance to this effect, as the matter has again been brought to the notice of Her Majesty's Government in a correspondence which has passed between the British and French naval officers on the Newfoundland Station.

This correspondence also refers to the questions connected with the use of cod-traps and to the establishment of lobster factories on the coast, upon which I addressed you in my despatch of the 11th instant.

I feel assured that your Ministers will recognize the necessity of coming to an early decision in regard to these matters.

I have, &c.

Governor Sir G. Des Vœux to Sir H. Holland.

GOVERNMENT HOUSE,
Newfoundland, February 21, 1887.

SIR: I have the honour to forward herewith copies of a Bill entitled "An Act to regulate the Exportation and Sale of Herring, Capelin, Squid, and other Bait Fishes," which was passed unanimously by both Houses of the Legislature of this Colony in the first week of the Session.

2. With the exception of the clause suspending the operation of the measure until its allowance by Her Majesty is made known by Proclamation, this Bill is identical, or almost identical, with that passed in the Session of last year, of which the non-allowance was conveyed to me in your despatch of the 3rd instant.

3. As this Bill contains the suspensory clause referred to, I have given my assent to it.

I have, &c.

(Signed)

G. WILLIAM DES VŒUX.

Sir H. Holland to Administrator Sir F. Carter.

DOWNING STREET, May 23, 1887.

SIR: Her Majesty's Government have had under their careful consideration your despatch of the 21st February, forwarding copies of a Bill entitled "An Act to regulate the Exportation and Sale of Herring, Capelin, Squid, and other Bait Fishes," which was passed by both Houses of the Legislature on the commencement of the present Session.

2. They have also had before them the Address from the House of Assembly on the subject of this Bill, which was duly presented to me by Sir R. Thorburn and Sir A. Shea, who were delegated by the House of Assembly to make representations to Her Majesty's Government on this matter.

3. In my despatch of the 3rd February I fully explained to you the reasons for which Her Majesty's Government had felt it necessary to refrain from submitting the Bill for Her Majesty's confirmation. I regret to observe, however, that the main reason appears to have been misapprehended by the House of Assembly, though I was careful to make it clear that the special loss which the introduction of new re-

strictions, without due notice and on the eve of the fishing season, would cause to French fishermen, was the consideration which principally precluded Her Majesty's Government from consenting to the imposition of these restrictions at the present time.

4. In suggesting that further communication with the French Government might lead to the discovery of a remedy for the present depression in the Newfoundland fishery trade in some other direction than in that of the prohibition of the sale of bait, Her Majesty's Government had in fact followed a suggestion made by the Colonial Legislature, which had itself referred to another solution (the modification of the French bounties) as likely to remove all need for restriction on the sale of bait.

5. I may also point out that, although the damage to the colonial fisheries is stated to have been going on for some period "within three years," the Bait Clause in the Arrangement of 1884 was not objected to by the Government of Newfoundland when stating the modifications which they desired to be made in the Arrangement in the Minute of Council of the 15th July in that year.

6. But although the Address of the House of Assembly has appeared to Her Majesty's Government to require the foregoing observations, they have not failed to give their best attention to the strong representations contained in it, and to the further important facts which have since been brought before them as to the operation of the French bounties, and they have felt it their duty to give effect to the reiterated expression of the wishes of the Legislature and Government of Newfoundland. They have accordingly advised Her Majesty to sanction the Act, and an Order in Council for the purpose will be forwarded to you by an early opportunity.

7. I have, however, desired you, by telegraph, not to issue any Proclamation under section 12 for bringing the Act into force until after the close of the present fishing season.

8. You will be so good as to apprise the Members of the Legislature of the decision which has been arrived at in reply to their Address.

I have, &c.

(Signed)

H. T. HOLLAND.

The Marquis of Salisbury to M. Waddington.

FOREIGN OFFICE, *July 5, 1887.*

M. L'AMBASSADEUR: With reference to Count d'Aubigny's letter of the 20th September last, in regard to the prohibition by the Newfoundland Government of fishing for lobsters in Bonne Bay, I have the honour to acquaint your Excellency that a despatch has been received from the Governor of that Colony in which he states that his Government have given a formal assurance that the prohibition will not be enforced against French citizens to whom there had not been any intention of applying it.

I have, &c.

(Signed)

SALISBURY.

The Marquis of Salisbury to M. Waddington.

FOREIGN OFFICE, August 24, 1887.

M. L'AMBASSADEUR: With reference to your letter of the 5th ultimo, upon the subject of the use of cod-traps off the coast of Newfoundland, and certain claims of French citizens in connection therewith, I have the honour to acquaint your Excellency that after careful consideration Her Majesty's Government have come to the conclusion that the French fishermen have no legitimate claim to compensation in respect of the losses which they allege that they have suffered in consequence of the use of cod-traps by British fishermen.

The claim to compensation is based on a supposed violation of the Declaration signed at Versailles on the 3rd September, 1783.

It is important, therefore, not only to examine carefully the terms of that Declaration, but also to bear in mind the circumstances under which it was made.

In the first place, I need hardly remind your Excellency that the right of fishery conferred on the French citizens by the Treaty of Utrecht did not take away, but only restricted during a certain period of the year and on certain parts of the coast, the British right of fishery inherent in the sovereignty of the island.

The restriction on the British right of fishery laid down in the second paragraph of the Declaration is that it should not be exercised by British fishermen so as to "interrupt in any manner by their competition the fishery of the French;" and "for this purpose" it was declared that the British fixed settlements (which were used on the shore for the "pêche sédentaire" as distinguished from the "pêche nomade") should be removed. This was a most important provision, as it had been a subject of complaint that, at the opening of the fishery season, the shore was found occupied by the fishing-scaffolds or "établissements sédentaires" of the Newfoundland fishermen.

The third paragraph of the Declaration proceeds to lay down, "among other things, that the XIIIth Article of the Treaty of Utrecht shall govern the rights of fishery, and be observed by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence."

Her Majesty's Government have always held that there is nothing in the XIIIth Article of the Treaty of Utrecht, or in the Declaration of 1783, which deprives British subjects of the right of taking fish at sea off that part of the shore to which the French Treaty rights apply, provided they do not molest the French fishermen in the exercise of their Treaty right of fishing, nor interrupt them by their competition. It is manifest that such molestation and interruption can only refer to a physical obstruction and impediment to the exercise of the French right of fishery, and not to any diminution to the French catch of fish which may be supposed to result from the mere participation by British fishermen in the sea fishery.

If cod-traps are used by British fishermen in fishing-grounds within the French fishery limits which are *bonâ fide* required by

French fishermen for their own use, the latter have a right to demand that such fishing-grounds be vacated, and to call on the proper authority to enforce their demand; but Her Majesty's Government cannot admit their right to found thereon a claim for compensation in respect of hypothetical profits which might have accrued to them but for the use of such cod-traps.

They are nevertheless prepared to take steps to cause the effect of these cod-traps upon the net fisheries, both British and French, to be carefully examined, and will then consider how far their suppression may be advantageous to the fishing interests of both nations.

I have, &c.

(Signed) SALISBURY.

M. Waddington to the Marquis of Salisbury—(Received March 6.)

[Translation.]

LONDON, March 5, 1888.

MY LORD: In reply to the note which I had the honour to address to the Foreign Office formulating reservations on the subject of the interpretation given by the Newfoundland Government to the Bait Act, Your Lordship was good enough to state in your note of the 16th December that this Act maintained entire the rights of my Government in that country.

I have the honour, in accordance with instructions received, to take act of this statement, not, however, without observing that in no case could it have appertained to the Newfoundland Parliament to infringe by any legal disposition the rights which accrue to us from the Treaties.

I have, &c.

(Signed) WADDINGTON.

The Marquis of Salisbury to M. Waddington.

FOREIGN OFFICE, November 23, 1888.

M. L'AMBASSADEUR: I have carefully considered, in conjunction with Her Majesty's Secretary of State for the Colonies, your Excellency's note of the 2nd September on the subject of the lobster fishery carried on by Mr. Shearer at Port Saunders, on the west coast of Newfoundland.

I have the honour to inform your Excellency that Her Majesty's Government have received Reports from the British naval officers on the Newfoundland Station on this subject, which show that proper and sufficient steps were taken by Captain Hamond to satisfy the obligation imposed by the engagements between this country and France to prevent Mr. Shearer from interfering in any way with the reasonable enjoyment by French citizens of their rights of fishery.

Her Majesty's Government are unable to assent to the claim advanced by your Excellency that the French Government must be the sole judge as to what constitutes such interference within the terms of the British Declaration of 1783.

That is a question on which both Governments have an equal right to form an opinion, and as to which Her Majesty's Government have always endeavoured to meet the views of the French Government as far as was possible consistently with the just claims of the Colony.

As regards the difficulties which have arisen out of the establishment of lobster factories on that part of the coast of Newfoundland to which the French fishery rights extend, they have been much increased, as your Excellency is no doubt aware, by the action of French citizens who have not discontinued the factories established by them, contrary to Treaty, notwithstanding the assurances contained in your Excellency's note of the 25th August, 1886.

The matter, moreover, has been complicated by the proceedings at White Bay, to which the attention of the French Government was called by Her Majesty's Embassy at Paris on the 8th July and the 4th September last.

Her Majesty's Government are desirous of meeting the complaints of the French Government in the most conciliatory manner; but they are placed in a position of much embarrassment in their communication with the Newfoundland authorities by the continued neglect on the part of France to give any effect to their repeated remonstrances against the erection by French citizens of lobster factories on shore, in violation of the express provisions of the Treaty and of the sovereign rights of the British Crown.

I have, &c.

(Signed) SALISBURY.

Lord Knutsford to Governor Sir T. O'Brien.

DOWNING STREET, May 31, 1889.

SIR: I have the honour to acknowledge the receipt of your telegram of the 1st April.

2. The course taken by your Ministers in declining to introduce a measure for marking vessels, which cannot cause any inconvenience, which is common in other countries, and the only aim of which is to facilitate detection in cases of breaches of the law or of existing Treaties, is very unsatisfactory and disappointing to Her Majesty's Government.

3. I transmit to you, for communication to your Government, a copy of the Convention concluded in 1882 between Great Britain, Germany, Belgium, Denmark, France, and Holland for regulating the police of the North Sea fisheries, and I request that you will call the attention of your Government to Articles V to XI of this Convention, which provide for the marking of all vessels fishing within the limits specified in Article IV.

4. Her Majesty's Government is of opinion that there is no reasonable ground on which the Government of Newfoundland can object to the introduction into that Colony of Regulations similar to those which the Governments interested in the North Sea fisheries have agreed upon as best calculated to insure proper police and to prevent the occurrence of disputes among rival fishermen.

5. They request the attention of your Ministers to the following passages in the letter from Captain Hamond to Vice-Admiral Lyons, dated the 25th October, 1887:

"I would point out again the absolute necessity of the Newfoundland schooners being properly marked with numbers on their sides and sails, their names being also painted on their sterns, and the vessels registered.

* * * * *

"As matters stand now, those schooners which fit out for their summer voyage for fish are under no control whatever.

"With proper means for identifying vessels, I believe the greater part of the wrecking of the 'Belem' would not have occurred."

6. Her Majesty's Government trust that this matter will, without delay, receive the serious consideration of your Ministers, with a view to further legislation on the subject, and that in the meantime continued vigilance may be exercised in regard to the strict enforcement of the existing law.

I have, &c.

(Signed) KNUTSFORD.

The Attorney-General, St. John's, to Governor Sir T. O'Brien.

ATTORNEY-GENERAL'S OFFICE,
St. John's, November 23, 1889.

SIR: In obedience to your Excellency's request, I have the honour to submit the following Report in relation to the Act passed during the last Session of the Legislature, cap. 6, relating to the exportation and sale of bait fishes, for the purpose of pointing out the nature of the amendments therein made upon the Acts of the Sessions of 1887 and 1888, and the reasons which led to the adoption of those amendments.

The object of the Act of 1887, 50 Vict., cap 1, amended by that of 1888, 51 Vict., cap. 9, was to enable the Government to prohibit the sale, exportation, &c., of bait fishes, for the purpose of supplying bait to foreigners. (*Vide* section 1 of the Act of 1887, and section 8 of the Act of 1888.)

The object of the Act of this year is not to extend or alter in any way the purposes or intention of the former Acts, but only to provide more efficient methods of carrying them into effect.

It was found by experience that several difficulties presented themselves in enforcing the provisions of the Acts of 1887 and 1888.

The prohibitory clauses of those Acts expressly applied only to exportation, or to sale or other transaction for the purpose of exportation "for bait purposes."

The question of fact, to be determined in every case, whether the exportation or other transaction was "for bait purposes," was found to be frequently attended with great difficulty and doubt, arising from the peculiar nature of the fishery business at certain seasons and in certain places.

At, or nearly at, the same times and places at which the "bait fishes" are usually taken for "bait purposes," by and for our own

fishermen for their fishery, and (formerly) for exportation to St. Pierre for the French, and for sale to United States' and Canadian fishermen, a large business has for years past been done in our waters in catching and exporting "fishes" of the same kind, particularly herring, for market in the United States and Canada, for consumption as food.

The Acts of 1887 and 1888 applied no restrictions, limitations, or conditions to this business.

It followed, as a matter of experience, that in many cases evasions of the Act took place, and prosecutions failed on account of the inability on the part of the prosecution to prove that the exportation in question was for "bait purposes," or rather that the statement of the accused, that it was for food purposes, was untrue.

It was therefore considered necessary to put the business of catching, buying, &c., these "fishes" for food purposes under some restrictions or conditions, in order to prevent its being used as a pretext for evading or defeating the object of the Act.

On the other hand, one of the provisions of the Acts of 1887 and 1888, in relation to the exportation for bait purposes, viz., that which required a licence for every sale or purchase for bait purposes, was attended with great difficulty in its application and enforcement.

In order to provide for the determination in any given case of the question of fact as to the purpose for which the exportation was intended, it was considered necessary to devise a complete system of regulations, applying to all the various classes of cases of shipping, conveying, exporting, &c., "bait fishes," known or practised in the Colony, in order that the particular kind of business against which the Act was directed might not be carried on under pretext or cover of a pretended other business.

Section 11 of the new Act applies to the various purposes for which bait fishes are usually taken, shipped, &c., and the various methods of dealing with them necessary to be placed under Regulation, in order to prevent the main object of the Act from being evaded or defeated.

The shipment, exportation, &c., being, as already stated, in all cases, for either one or other of two purposes, viz., for bait, or consumption as food, one general provision was first made applicable to every case, viz., that a licence must be obtained, setting forth and adapted to the kind of business in which the licence purposes to engage (sections 5 and 6).

The next practical difficulty attending the enforcement of the former Acts, especially as regards vessels belonging to other countries, arose from the want of power or jurisdiction over an offender, the offence of "exportation" not being complete until the offender had got beyond our jurisdiction, *i. e.*, outside the limit of our territorial waters. This difficulty it is intended to meet, as far as possible, by the provisions, under section 7, relating to bonds with sureties, and, in cases of exportation to a foreign country, to proof of the landing of the cargo in such country.

The present Act also contains certain new provisions relating to evidence, the onus of proof, &c., rendered necessary by the peculiar nature of the business. The intention to "export," and to use the bait fishes for bait purposes, are facts as to which in any given case there would be no reasonable doubt in the mind of the Court, but as to

which it is impossible in most cases to obtain direct and positive evidence. Sections 12 and 17 relate to this point.

Section 10 contains a new penal provision, viz., the confiscation of the "fish" unlawfully taken, &c. It also remedies a defect under the former Acts in relation to the power of the convicting Magistrate to confiscate, which, though intended, has been held not to have been given by the strict words of the Acts.

I have, &c.

(Signed)

J. S. WINTER.

Extracts from British Blue Book, Newfoundland, May, 1891.

Statement made by Sir W. V. Whiteway in the House of Lords on 23rd April 1891.

MAY IT PLEASE YOUR LORDSHIPS,

On behalf of the Legislature of Newfoundland, I beg to express deep gratitude for the great privilege which has been conceded to its delegates by your Lordships in permitting us to appear at the bar of this most noble and august assembly, to express the Legislature's objections to the Bill entitled "An Act to revive certain sections of an Act of the fifth year of the reign of George IV., chap. '51, for the purpose of carrying into effect engagements with "France respecting Fisheries in Newfoundland."

I shall express those objections as concisely as possible.

It will not be necessary to tire your Lordships by reading those portions of the treaties and declarations which refer to Newfoundland, with all of which you are already familiar; and I will therefore content myself with saying that the 13th article of the Treaty of Utrecht (1713) was revived by the 5th article of the Treaty of Paris (1763), and that the Treaty of Versailles (1783) again restored the fishery rights of the French to their position under the Treaty of Utrecht. The Treaty of Paris (1814) restored matters to the status they were in in 1792, under the Treaty of Versailles, and in 1815 the third Treaty of Paris confirmed the treaty made in the previous year. Your Lordships' attention is particularly drawn to the 6th article of the Treaty of Paris (1763), to the 4th article of the Treaty of Versailles (1783), and to the declarations which accompanied the latter treaty.

(The articles of the several treaties and the declarations form Appendix A to this paper.)

HISTORY OF LEGISLATION.

A brief history of the legislation in connexion with the treaties and declarations will be found instructive and significant when the arguments which I shall venture to adduce come to be considered.

It is a remarkable fact that for 75 years—from 1713 to 1788—no legislation seems to have taken place with reference to the execution of the Treaties of Utrecht, Paris, or Versailles. The first Act upon the subject was passed in July 1788—five years after the Treaty of

Versailles was signed. It first set forth the engagements made by the treaties and declarations accompanying the Treaty of Versailles, and then enacted as follows:—

Section I.

“It shall and may be lawful for His Majesty, His heirs and successors, by advice of Council, from time to time to give such orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, as he or they shall deem proper and necessary to fulfil the purposes of the definitive treaty and declaration aforesaid; and, if it shall be necessary to that end, to give orders and instructions to the Governor, or other officer or officers as aforesaid, to remove or cause to be removed any stages, flakes, train vats, or other works whatever, for the purpose of carrying on fishery, erected by His Majesty’s subjects on that part of the coast of Newfoundland which lies between Cape St. John passing to the north, and descending by the western coast of the said island to the place called Cape Rage, and also all ships, vessels, and boats belonging to His Majesty’s subjects which shall be found within the limits aforesaid; and also, in case of refusal to depart from within the limits aforesaid, to compel any of His Majesty’s subjects to depart from thence; any law, custom, or usage to the contrary notwithstanding.”

Section II.

“And be it further enacted by the authority aforesaid, That if any person or persons shall refuse, upon requisition made by the Governor, or any officer or officers acting under him, in pursuance of His Majesty’s orders or instructions as aforesaid, to depart from within the limits aforesaid, or otherwise to conform to such requisition and directions as such Governor or other officer as aforesaid shall make or give for the purposes aforesaid, every such person or persons so refusing or otherwise offending against the same, shall forfeit the sum of two hundred pounds, to be recovered in the Court of Session or Court of Vice-Admiralty in the said island of Newfoundland, or by bill, plaint, or information in any of His Majesty’s Courts of Record at Westminster; one moiety of such penalty to belong to His Majesty, His heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute for the same: provided always that every such suit or prosecution, if the same is commenced in Newfoundland, shall be commenced within three months, and if commenced in any of His Majesty’s Courts of Record at Westminster, within twelve months from the time of the commission of such offence.”

War terminated the Treaty of Versailles; and though the Treaty of Paris (1814) restored to France “the colonies, fisheries, and factories of every kind which were possessed by France on the 1st January 1792,” it does not appear to have been considered that this treaty revived the Act above quoted, for in 1824 an Act intituled “An Act to repeal several Laws relating to the Fisheries carried on upon the Banks and Shores of Newfoundland, and to make provision for the better conduct of the Fisheries for five years, and from thence to the end of the then next session of Parliament,” contained two sections—12 and 13—which were almost literally the same as those

above quoted; and these two sections it is proposed to re-enact by the Bill now before your Lordships.

An Act was passed in 1829 to continue the Act 5 Geo. IV. chap. 51. last referred to, until the 31st of December 1832; and in 1832 the Act 5 Geo. IV., chap. 51. was further extended until 1834, "and no longer." In 1832 a legislature was granted to Newfoundland, its first assembling taking place in 1833; and Parliament did not in 1834 further continue in force the law enacted in 1824, leaving to the Legislature of the Colony the task of passing laws and enforcing regulations to carry out the treaties and declarations.

The Legislature of the Colony did not, however, assume this duty, nor does it appear by the records that its attention was ever called to the matter. The fact remains, however, that in 1834 the last Act of Parliament in this connexion expired by virtue of one of its own provisions, and that from that year until the present time no legal authority has existed for the enforcement of Her Majesty's instructions to naval commanders upon the coast of Newfoundland. It is now proposed to re-enact the provisions of the Act 5 Geo. IV., chap. 51. and to give them an application in a manner never before suggested.

* * * * *

Extracts from British Blue Book, Newfoundland, August, 1893.

Colonial Office to Sir W. Whiteway.

DOWNING STREET, August 3, 1891.

SIR: Referring to your interview with Lord Knutsford on the 21st July, which brought to a conclusion the discussions respecting the permanent Bill which it is proposed should be passed by the Legislature of the Colony for the enforcement of the French Treaties and Arbitration Award, I am to invite your consideration of the following observations.

* * * * *

10. SECTION 1, SUB-SECTION 1. The Colonial Government desires to have the appointment of the proposed judicial officers, but it was explained to the delegates from the first that the selection must rest with Her Majesty's Government, who in return have undertaken to provide the salaries of the two gentlemen who it is believed will be sufficient for the duties to be performed. At the same time it will be open to the Colony to ask for the appointment of a third if they think fit to bear the expense; and in that case their recommendation of any particular person would doubtless receive favourable consideration. But looking to the delicate international bearing of the cases which may come before the Court, Her Majesty's Government have formed a decided opinion that at any rate at the outset the judges should be gentlemen unconnected with the Colony, and independent of all local interests. It may safely be presumed that able lawyers will speedily make themselves acquainted with the conditions of the fishery, while the power of appointing assessors will enable them to obtain the assistance of gentlemen possessing special local knowledge. And to this view, which the delegates were understood to accept, Her Majesty's Government must adhere.

* * * * *

16. It will, I feel confident, be recognised that Her Majesty's Government have sought to meet as far as possible the views which you, together with the other delegates, have placed before them during the frequent discussions that have taken place, and Her Majesty's Government trust that the Government and Legislature of Newfoundland will feel no difficulty or hesitation in passing the desired measure.

17. The Colony will thus show that it is prepared honourably to abide by the international engagements affecting the Island, and will declare these engagements to be part of the Colonial law. By creating the proposed court the Legislature will also have given an assurance to the Colonists engaged in the fishery that they will be dealt with only under the decisions of a competent legal tribunal.

18. At the same time the establishment of this court will have a further advantage, in that diplomatic complaints of infringement of treaty rights or of denial of justice will be based upon facts duly sifted and accurately ascertained, and not only upon the *ex parte* statements of aggrieved fishermen whose statements would frequently be contradicted by the other parties to the transaction.

* * * * *

I am, &c.

(Signed)

R. H. MEADE.

Sir WILLIAM WHITEWAY, K.C.M.G.

* * * * *

[Enclosure in No. 1.]

Draft of a bill to provide for carrying into effect Her Majesty's engagements with France respecting the fisheries off the coast of Newfoundland, and for the judicial determination of questions arising with reference thereto.

* * * * *

1.—(1.) Her Majesty the Queen may from time to time, by instrument under Her Royal Sign Manual and Signet, appoint Judicial Commissioners for the treaty coast and waters, and every Commissioner so appointed shall receive from the Governor a commission for the purposes of this Act.

(2.) There shall be a superior court of record, called the Judicial Commission Court, and the said Judicial Commissioners shall be judges of that Court.

Newfoundland customs circular of March 18, 1898.

Under the Treaty of 1818, made between Great Britain and the United States, the fishermen of the latter country have liberty to catch fish on that part of the coast between Ramea Islands and Cape Ray and between Cape Ray and Quirpon Islands, and of drying or curing fish in any unsettled parts within those limits. They may not, however, enter any settled parts in this Colony within the above limits, or any parts without those limits, for any purpose other than for the purpose of shelter, and of repairing any damage, or of purchasing wood and of obtaining water; except for taking fish within the above limits.

Under the "Foreign fishing vessels Act" 55 Vic. Cap. 10, fishing vessels of the United States are permitted to obtain a license to enter

any port in this Colony for the purpose of purchasing bait, ice, seines, lines and all other supplies and outfits for the fishery and for the shipping of crews.

You are to see that every fishing vessel of the United States which enters your port or any port within your jurisdiction, except it be within the above limits, for other than the purpose of shelter, repairing damage and of purchasing wood and of obtaining water, shall obtain a license as set forth in the "Foreign fishing vessels Act," and shall pay for the same the fee of one dollar and fifty cents per registered ton, but if the port be within the above limits she may enter to take (catch) fish without a license, as well as for the above purposes, but not to buy fish or carry on trade, or for any purpose not above mentioned.

You are prohibited from issuing to any foreign fishing vessel a license, if such vessel has on board dutiable goods that may be sold or otherwise disposed of in trade.

Every fishing vessel of the United States which enters your port, or any port within your jurisdiction, having on board goods which may be sold or otherwise disposed of by way of trade, must be promptly reported to the Assistant Collector. When reporting give full particulars as to name of vessel, tonnage, port of registry, master's name, number of crew and the kinds and quantity of dutiable goods on board such vessel, which may be sold or disposed of in trade. Ship's stores are to be treated as such, and shall not be landed or disposed of by way of trade, but if the quantity of liquor or tobacco on board such vessel be large, a portion may be considered as not being ship's stores, and in this respect you must use your own discretion.

Vessels of the United States resorting to the herring fishing centres during the fall and winter herring fishery, must enter and clear at a port of entry in this Colony and will not be permitted to enter without producing a clearance obtained from the port in the United States which they last left before entering any port in this Colony. A license only permits fishing vessels to obtain bait and not cargoes of herring for export, and fishing vessels having a license only will not hereafter be permitted to purchase herring for export.

Custom House, St. John's, Newfoundland, 18th March, 1898.

H. W. LEMESSURIER,
Assistant Collector.

Correspondence between the Government of Newfoundland and the Imperial Government, in reference to the settling of the French Shore Question, 1904.[^a]

No. I.

Despatch from Mr. Lyttelton stating the basis on which a settlement is possible.

[Received 14th January, 1904.]

The discussion of the French fishery question on the basis of arrangement in the matter of Baiting and Bounties having proved of no avail, His Majesty's Advisers proposed not to continue it, but to

[^a] Published Saint John's, Newfoundland, 1904.

put before the Government of France an arrangement, in draft, which will terminate the rights of French fishermen to land and to dry their fish on the shores of Newfoundland, but which will leave a concurrent right of fishery, the regulating and policing of which will be in the manner provided in the North Sea Fishery Convention of 1881, Articles 14 to 38, and in the Convention of 1887 (also North Sea Fishery). The Imperial Government to compensate the owners of all existing French establishments on the Treaty Shore of the Island; and that His Majesty's Government presume that they may state that the Newfoundland Government will approve of this, and will undertake to pass the necessary permanent legislation to provide for the carrying out, policing and regulating, on the lines above suggested, the joint fishery.

ALFRED LYTTELTON,
Secretary of State for the Colonies.

No. II.

Despatch from Governor Boyle to Secretary Lyttelton stating Government's objections.

[Sent 18th January, 1904.]

The objections raised by the Premier the Right Hon. Sir R. Bond are (1) the uncertainty of the powers and jurisdiction of the Commanders of the policing cruisers to be employed; (2) the extent of the French fishing rights in tidal waters and bays; (3) the absence of powers for obtaining redress in Colonial Law Courts in cases of French vessels who may offend, and (4) the absence of assurance that French concurrent rights will not extend to catching of salmon and taking of whales in territorial waters. I would suggest that as much as possible of the draft agreement be telegraphed.

CAVENDISH BOYLE,
Governor of Newfoundland.

No. III.

Despatch from Secretary Lyttelton assuring Newfoundland Government that no new fishery rights are conceded to the French.

[Received 22nd January, 1904.]

His Majesty's Government have never admitted any right of French to catch whales or that they have any such rights and no change is proposed to be made. His Majesty's Government do not propose to concede any rights to fish for salmon in the rivers or to use stakes or fixed nets. The Articles of the North Sea Fisheries Convention fully define the powers and jurisdiction of the cruisers.

We now ask the assurance of your Government that if we can obtain an abandonment of the rights to land and dry fish they will undertake to obtain the necessary legislation for policing and regu-

lating the joint fisheries on the lines which have worked so well and without trouble in the North Sea where there is more competition than there is ever likely to be after the withdrawal of the French establishments from the Treaty Shore.

ALFRED LYTTTELTON,
Secretary of State for the Colonies.

No. IV.

Despatch from Governor Boyle insisting that the French fishing season shall cease on October 20th in each year.

[Sent 24th January, 1904.]

The Executive Council upon my referring to them your telegram of the 22nd have requested me to obtain an assurance that the French concurrent rights will not extend beyond the present season limit, namely, the 20th October in each year.

CAVENDISH BOYLE,
Governor of Newfoundland.

No. V.

Despatch from Secretary Lyttelton wherein the Imperial Government agrees to this limitation.

[Received 25th January, 1904.]

You may inform your Ministers that His Majesty's Government do not propose that the fishing rights of the French should be allowed to extend beyond the 20th October.

ALFRED LYTTTELTON,
Secretary of State for the Colonies.

No. VI.

Despatch from Governor Boyle setting out conditions on which alone our Government would agree to a settlement.

[Sent 24th January, 1904.]

The Committee of Council having had under consideration a Cable Despatch (No. 1) received from the Right Honourable the Secretary of State for the Colonies, marked "Secret", bearing date the 14th of January, 1904. to the following effect, namely, that the discussion of the French fishery question on the basis of arrangement in the matter of Baiting and Bounties having proved of no avail, His Majesty's Advisers proposed not to continue it, but to put before the Government of France an arrangement in draft, which will terminate the rights of French fishermen to land and to dry their fish on

the shores of Newfoundland, but which will leave a concurrent right of fishery, the regulating and policing of which will be in the manner provided in the North Sea Fishery Convention of 1881, Articles 14 to 38, and in the Convention of 1887 (also North Sea Fishery.) The Imperial Government to compensate the owners of all existing French establishments on the Treaty Shores of the Island; and that His Majesty's Government presumed that they may state that the Newfoundland Government will approve of this, and will undertake to pass the necessary permanent legislation to provide for the carrying out, policing and regulating, on the lines above suggested, the joint fishery; also cablegrams received from the Secretary of State in answer to queries transmitted at the instance of the Premier under date 18th and 24th instants, more fully explaining the above proposal; it was resolved unanimously that, (1) provided it be understood that no new fishery rights are conceded to France; (2) that the rights under the new arrangement shall not extend beyond the 20th of October; (3) that His Majesty's Government can obtain from France a complete abandonment of the rights of landing and drying fish on the Treaty Coast and Islands adjacent thereto; (4) that this shall free the Colony forever from all those restrictions and limitations that have retarded the settlement of that Coast, the prosecution by British subjects of the Fisheries along the whole of that Coast, as well as the development and shipment of its minerals and other resources, this Government will undertake to obtain necessary, permanent legislation for policing and regulating the fisheries on that Coast on the lines laid down in Imperial Statute, Chap. 22 of 46 and 47 Victoria and 56 and 57 Victoria, Chap. 17. Details of proposed legislation to be referred to His Majesty's Government.

CAVENDISH BOYLE,
Governor of Newfoundland.

No. VII.

Despatch from Secretary Lyttelton suggesting a proposal for policing the coast and stamping out smuggling.

[Received 30th March, 1904.]

Instead of the reference to Articles 14 to 38 of the North Sea Fishery Convention, and to the Convention of 1887 respecting the North Sea Liquor traffic, to which I referred in my Secret telegram of the 14th of January (No. 1.) it is proposed to substitute the following Article in the proposed Convention with France.

"The Policing of the Fisheries, as well as that of illicit traffic in liquor and of contraband spirits, will be the subject of a regulation to be agreed upon between the two Governments."

I trust that your Ministers will concur in this proposal. They will have an opportunity of expressing their views on any proposed regulations which may be framed under this Article. *Telegraph reply at the earliest possible moment as the matter is of extreme urgency.*

ALFRED LYTTELTON,
Secretary of State for the Colonies.

No. VIII.

Despatch from Governor Boyle wherein our Government insists on the right to approve of any regulations that may be made.

The Committee of Council have had under consideration the Secret Cable Despatch received from the Right Honourable the Secretary of State for the Colonies, of date the 30th instant, proposing an Article in substitution for Articles 14 and 38 of the North Sea Fishery Convention, and to the Convention of 1887, respecting the North Sea Liquor Traffic previously agreed to, in connection with the proposed Convention between His Majesty's Government and that of France, and asking for the concurrence of the Government of this Colony to the said proposal.

The Committee regret that they have not the Regulation to be agreed upon before them, as they are prepared to immediately discuss the details, and are anxious to facilitate by every means in their power a speedy adjustment of difficulties. They concur, however, in the proposal, *on the distinct understanding that the Regulation to be agreed upon shall be subject to the approval of the Legislature of this Colony, and that it expressly provides for the trial of all offences under the Convention by local Courts, with right of appeal to Privy Council.*

CAVENDISH BOYLE,
Governor of Newfoundland.

No. IX.

Despatch to Secretary Lyttelton asking for details of the treaty.

[Sent a. m. 9th April, 1904.]

Press telegrams state that Anglo-French Treaty covering all points in dispute has been signed. Legislature pressing for information as to what will be effect here. Ministers would be glad if they could receive some information on the subject which they could communicate to Parliament. Am I authorized to make public general terms of proposed arrangement as far as appearing in previous correspondence.

CAVENDISH BOYLE,
Governor of Newfoundland.

No. X.

Despatch from Secretary denying London Press News.

[Received p. m. 9th April, 1904.]

Statements appearing in the London press as to clauses of Convention which affect the Colony under your Government are not accurate. I hope at an early date to telegraph the text of them.

ALFRED LYTTELTON,
Secretary of State for the Colonies.

No. XI.

GOVERNMENT HOUSE,
St. John's, Newfoundland, 12th April, 1904.

DEAR SIR ROBERT BOND: I enclose herewith, for the information of Ministers, a copy of a telegram which I received at 6 p. m. from the Secretary of State giving the text of the clauses affecting this Colony in the Convention which was signed (in London) on the 8th current, and referring to the notes which have been exchanged between His Majesty's Government and that of the French Republic in connection therewith.

Believe me to be, yours, sincerely,

CAVENDISH BOYLE,
Governor of Newfoundland.

[Inclosure.]

THE TREATY.

Despatch from Secretary Lyttelton giving the text of the Treaty.

[Received p. m. 12th April, 1904.]

Following is English text of clauses affecting Newfoundland in convention signed on 8th April:

ARTICLE I. France renounces the privileges established to her advantage by Article XIII. of the Treaty of Utrecht and confirmed or modified by subsequent provisions.

ARTICLE II. France retains for her citizens on a footing of equality with British subjects the right of fishing in the territorial waters on that portion of the Coast of Newfoundland comprised between Cape St. John and Cape Ray, passing by the North; this right shall be exercised during the usual fishing season closing for all persons on the 20th of October of each year. The French may therefore fish there for every kind of fish including bait and also shell fish. They may enter any port or harbor on the said coast and may there obtain supplies or bait and shelter on the same conditions as the inhabitants of Newfoundland, but they will remain subject to the local regulations in force; they may also fish at the mouths of the rivers but without going beyond a straight line drawn between the two extremities of the banks, where the river enters the sea. They shall not make use of stake nets or fixed engines without permission of the local authorities. On the above mentioned portion of the Coast, British subjects and French citizens shall be subject alike to the laws and regulations now in force, or which may hereafter be passed for the establishment of a close time in regard to any particular kind of fish or for the improvement of the fisheries. Notice of any fresh laws or regulations shall be given to the Government of the French Republic three months before they come into operation. The policing of the fishing on the above mentioned portion of the coast, and for the prevention of illicit liquor traffic and smuggling of spirits shall form the subject of regulations drawn up in agreement by the two Governments.

ARTICLE III. A pecuniary indemnity shall be awarded by His Britannic Majesty's Government to the French citizens engaged in fishing, or the preparation of fish on the "Treaty Shore," who are obliged either to abandon the establishments they possess there, or to give up their occupation, in consequence of the modification introduced by the present Convention into the existing state of affairs. This indemnity cannot be claimed by the parties interested unless they have been engaged in their business prior to the closing of the fishing season of 1903. Claims for indemnity shall be submitted to an arbitral tribunal composed of an officer of each nation, and, in the event of disagreement of an umpire appointed in accordance with the procedure laid down by Article XXXII of the Hague Convention. The details regulating the constitution of the tribunal and the conditions of the enquiries to be instituted for the purpose of substantiating the claims shall form the subject of a special agreement between the two Governments.

ARTICLE IV. His Britannic Majesty's Government, recognizing that, in addition to the indemnity referred to in the preceding article, some territorial compensation is due to France in return for the surrender of Her privilege in that part of the island of Newfoundland referred to in Article II., agree with the Government of the French Republic to the provisions embodied in the following articles.

(The remaining Articles set forth the material concessions in other parts of the Empire, which have been necessary for His Majesty's Government to make, to secure for Newfoundland the important advantages of this convention.)

Notes have also been exchanged providing for reciprocal recognition of British Consul at St. Pierre and French Consul at St. John's, Newfoundland, on convention coming into force, and defining fixed engines, and giving assurance that Article II. precludes suppression of liberty hitherto enjoyed by French fishermen of purchasing bait in any port or harbor of the Treaty Coast.

ALFRED LYTTTELTON,
Secretary of State for the Colonies.

No. XII.

Despatch to Secretary Lyttelton asking if the twentieth of October clause applies to our Fishermen.

MINUTE OF COMMITTEE OF COUNCIL.

[Sent 15th April, 1904.]

Ministers request me to state that if the right of the people of this Colony to its fisheries throughout the year is not preserved, they cannot approve the arrangement. If British fishermen were prohibited from the Winter Fishery under Convention or other instrument, does not His Majesty's Government realize that the whole winter fishery would be in the hands of Americans by virtue of Treaty 1818, and British subjects must find themselves in most invidious and ruinous position. Ministers must press that close season shall only apply to concurrent right of French fishermen.

CAVENDISH BOYLE,
Governor of Newfoundland.

No. XIII.

Letter from Governor Boyle to Premier Bond testifying to the splendid work of the Premier and his Ministers.

GOVERNMENT HOUSE,
St. John's, Newfoundland, 20th April, 1904.

DEAR SIR ROBERT BOND, I send you herewith the telegraphic reply which I have received from the Secretary of State to the message which I sent on the 15th current, containing the text of Minute of the Committee of Council submitted on that day.

Mr. Lyttelton answers all remaining questions, his reply is conclusive as to the conservation of all the rights of our fishermen; and it is the authoritative declaration of His Majesty's Government as to the effect of the Convention.

I congratulate you, your colleagues and the whole community most cordially on the splendid results which have been obtained, and I wish here to repeat what I said to you last evening that your every action throughout the negotiations has been in defence of the Colony's interest, and to secure to all here the fullest protection as regards existing rights, and the greatest advantages under any new conditions.

I shall be glad indeed when you can make the whole correspondence public, and so put a stop to the clamour which has been raised, and which is calculated to do much mischief unless the alarm is speedily allayed.

This I think you can now do, and I feel assured that the statements which you will make, and the action which you will take in the matter, will convince the people of the advantages which have been gained for them one and all, and of the whole-hearted and patriotic policy which you have consistently pursued.

Believe me to be, yours sincerely,

CAVENDISH BOYLE,
Governor of Newfoundland.

No. XIV.

Despatch from Secretary Lyttelton to Governor Boyle, in reply to No. XI. declaring that the twentieth of October clause does not apply to Newfoundland fishermen.

[Received 19th April, 1904.]

The effect of the convention is to maintain all the existing rights of British fishermen and to give them in addition equal rights of fishing during the summer which they have not enjoyed hitherto. They are in no sense prohibited from the winter fishery whilst their liberty to fish after the 20th of October remains undisturbed, and that the Convention can be construed so as to impair that liberty is not admitted by His Majesty's Government.

ALFRED LYTTELTON,
Secretary of State for the Colonies.

No. XV.

Despatch from Secretary Lyttelton to Governor Boyle explaining the advantages of the new treaty.

[Copy.]

DOWNING STREET, April 12th, 1904.

Newfoundland, No. 9.]

SIR,—In confirmation of my telegram to-day, I have the honour to forward to you, for the information of your Ministers, copies of a paper which has been laid before Parliament containing the texts of the Agreements concluded with France on the 8th instant, together with an explanatory Despatch by the Secretary of State for Foreign Affairs.

2. The general effect of the Convention dealing with Newfoundland is that France renounces, in return for important territorial concessions in other parts of the Empire and in consideration of the grant of a pecuniary compensation to the French citizens engaged in fishing or the preparation of fish on the Treaty Shore, the privileges established to her advantage by Article XIII. of the Treaty of Utrecht and confirmed or modified by subsequent provisions, withdraws her claim to the right of fishing in the rivers of the Colony and retains only the right of fishing on equal terms with British Fishermen in the waters of the Treaty Coast during the usual summer fishery season subject to the local Regulations or Laws relating to the establishment of a close time or to the improvement of the fisheries.

3. As a supplement to the Convention, notes have been exchanged between the two Governments providing for the reciprocal recognition, on the Convention coming into force, of a British Consul at St. Pierre and a French Consul at St. John's.

4. Notes have been exchanged respecting the signification attached by His Majesty's Government to the words "stake nets or fixed engines" which occur in paragraph 3 of Article II., and respecting the effect of the permission accorded to French citizens in paragraph 2 of the same Article to enter ports and harbours on the Treaty Coast and there obtain supplies or bait or shelter on the same conditions as the inhabitants of Newfoundland.

5. Copies of these various notes are enclosed for the information of your Ministers.

6. Permanent legislation by the Colony will be required for the carrying out of Regulations to be drawn up under the Convention for the policing of the joint fishery, etc., but your Ministers will be consulted and have full opportunity by expressing their views on the terms of any such Regulations before they are agreed to by His Majesty's Government.

7. It is with much satisfaction that I find myself able, in the name of His Majesty's Government, to congratulate the Government and the people of Newfoundland on the signature of a Convention which puts an end to a situation on the Treaty Shore which for nearly two hundred years has given rise to difficulties and anxieties of the most serious character. The advantage to Newfoundland of becoming the mistress of the whole of her coasts and of being free to devote

her energies to the development of their natural resources cannot be over-estimated. Your Government will observe that this advantage has not been secured without conceding to France very valuable facilities in other parts of the Empire involving some accession of territory. Considerable as these sacrifices are His Majesty's Government feel that, apart from the wider considerations referred to in Lord Lansdowne's despatch, they are in a large measure justified by the security which they afford for the future prosperity and development of the oldest British colony.

I rely confidently on the full and ready co-operation of your government in giving effect to the provisions of the Convention.

I have, etc.,

ALFRED LYTTLETON,
Secretary of State for the Colonies.

CAVENDISH BOYLE,
Governor of Newfoundland.

Extracts from British Blue Book, Newfoundland, October, 1907.

Extracts from The Western Star [Bay of Islands] of October 3 and 10, 1906.

OCTOBER 3, 1906.

The herring fishery season is rapidly approaching, and the atmosphere in this locality is rife with quandary.

The local fishermen, numbering about 800, who in the past obtained employment on the American vessels, are this year in doubt as to their ability to provide for themselves and families on account of the passing of an Act in the last General Assembly, the provisions of which are manifestly intended to prohibit American vessels from procuring Newfoundland fishermen for their crews. The passing of this Act will affect about 3,000 Newfoundlanders directly, and as many more in an indirect way to a greater or lesser extent.

The enactment of the Act above referred to is only another deplorable exemplification of Robert Bond's reckless disregard for the welfare of the inhabitants of the Colony which he so faultily represents, his permitting the spirit of retaliation, which prompted the passage of the Act, to override his consideration of the fishermen and their families, who must necessarily suffer many privations as a consequence, is thoroughly demonstrative of the abject selfishness in his make-up. To satisfy his personal feelings he has taken the bread out of the mouths of an ample percentage of his own people, they who have been largely instrumental in placing him where he is, and whom he has promised on oath to protect.

A few short years ago, when our fishermen were allowed to serve on foreign vessels, over 100,000 dollars were distributed among them as a result of their labour, last year the amount dwindled down to one-half that figure, with the prospect of this year's decline being proportionately greater, owing to stupid management of our affairs and mad legislation.

What will compensate the fishermen about Bay St. George, Bonne Bay, and Bay of Islands for the suffering of their families, whose welfare was so ignominiously ignored? The pangs of hunger are dreadful beyond description. Who shall stay the hand of poverty from dealing unkindly with the families of those fishermen who will be deprived of their yearly competence?

A correspondent asks: Where is the man who in the past has been our supporter—Mr. M. P. Gibbs? Can he not come to the rescue in this our time of great need to give to the fishermen the legal advice they so much require upon the question of their personal rights under this new Act? Sir Robert Bond has proven faithless and worked a great hardship upon our fishermen and their families. Will Mr. Gibbs also forsake them? It is the consensus of opinion here that he will uphold the reputation he has acquired as the friend of the labourer, and will come to Bay of Islands and vicinity to give the needed legal assistance to those who have given him their friendship and support in the past. By doing this he will be performing a most charitable service, and earn for himself the undying gratitude of all the people along our shores.

OCTOBER 10, 1906.

It is obvious, from the tenour of the articles appearing in the Evening Telegram, that Sir Robert Bond is exhausting his limited ability in an endeavour to bolster up his freak of legislation. He is shrieking himself hoarse, plays a heroicomic part, and, with characteristic dastardly shamelessness, attempts by specious statements and false assurances to offset popular disapproval of his harum-scarum policy. What is this policy? To rob the people of the west coast, and the Colony as a whole, of the wealth of the sea in order that his vengeance with the American people who rejected his reciprocity Treaty proposals might be appeased. That is the policy of our Premier. Small consideration does the vain, bombastic Premier give to the brawn and muscle of Bay of Islands, Bonne Bay, St. George's and Placentia, and the whole west coast; his own vindictiveness must be satisfied—to Hades with the fishermen! But the people are wrathful and refuse to submit to the Premier's mad policy, which might ultimately lead to serious results and international complications. The people's voice may be temporarily quieted, but it is as clear as day and unmistakably sure that *vox populi* ultimately conquers, and the sooner Sir Robert Bond settles down to this conviction the better. And Sir Robert must realize there is wide-spread determination among the west coast fishermen that the Americans will not be allowed to use purse-seines; any attempt to do so will be met with the resistance of an outraged people. Bond's policy will cost the Colony dear if persisted in; and His Excellency the Governor should be invited by the people to suspend the operation of the Act relating to foreign fishing-vessels, and then remove from office the stupid, vain, farcical, reckless blunderer who dared to outrage a quiet, industrious, loyal people.

We are indebted to our courteous friend, the editor of the Evening Telegram, for the marked attention bestowed upon our humble efforts to place the Premier in the proper light before the people of the west coast. The search-light of truth has been thrown upon the Premier's policy, and it has been revealed that this policy is being

nurtured as it was conceived, with the one idea of appeasing the Premier's wrath with the American Senate. The Telegram dislikes our attitude, but it must surely understand that our first duty is to the people of the west coast. We have supported the Government when it has done the square thing by our people. We wish it clearly understood that our Premier's present policy is too disastrous and crazy a policy to be borne by this people; and it is not surprising, therefore, to find the whole populace aflame with indignation. And must we then stand idly by and see the people's rights sacrificed? Not at all, friend Telegram; just as you have disapproved of Bond's notorious land deal in Trinity Bay, so we, perhaps more boldly, resent his mad policy of ruination of the west coast fishermen. And let the Telegram and our Premier make note of this fact; nothing will be left undone to expose the shameless unrighteousness of the Premier's untoward and unstatesmanlike policy of ruining the fishermen and robbing them of the comforts and freedom they so long enjoyed. Sir Robert Bond has fooled this people for a long time, but he will realize that he cannot fool them all, all the time.

We read with increasing interest the Daily News' fearless and commendable criticism of the reckless, blundering *non compos mentis* policy pursued by Premier Bond, and we cannot refrain from expressing our admiration of the attitude and character of the News in thus presenting to the people a straightforward summary of our unworthy Premier's shameless exhibition of wanton disregard for the welfare and good of the people he represents, and the country of his birth. "He who runs may read" is a time-worn adage, and is applicable to the present situation. What the Daily News has printed are recognized facts. The Premier's incapacity is now proverbial, and how long the people are going to be compelled to carry the yoke of his decrepit guidance is a question of moment. There should be an end to their martyrdom. They have already been held too long in bondage. Who shall be their emancipator?

The fishermen in this vicinity are experiencing considerable hardship as a result of his foolhardy administration. To satisfy his revengeful appetite, whetted to an edge by the rebuff handed him by the American Senate in regard to his reciprocity Treaty, he has, in a conscienceless manner sacrificed the comfort and good of the fishermen in robbing them of employment on American vessels during the herring season. Not only has he done this, but more: the rebuke he sought to administer to the American Government, out of a desire for retaliation, proved to the Americans a boomerang, and an unfortunate catastrophe to our fishermen, the effects from which they will never recover.

In another issue we made reference to the fishermen's rights under the new Act prohibiting them from registering with American crews. The fishermen in this vicinity are in a quandary as to what their rights are under this new law, and they have been expecting a visit from Mr. Gibbs, who has heretofore proved their friend. We are of the impression that Mr. Gibbs will not forsake them in their trouble, as the Premier has ruthlessly done, but that he will put in an appearance to give his supporters and friends in this district the benefit of his advice in their hour of need, and further endear himself to the hearts and homes of our distressed fishermen, who must offer their blessings to the Premier for their present misfortune.

Extract from the Montreal Star, October 10, 1906.

Honourable A. B. Morine, former leader of the Newfoundland Opposition, was seen at his residence here to-day by the "Montreal Star" representative and asked for an expression of his views regarding the *modus vivendi* just agreed upon between the British and United States Governments. Mr. Morine said:

"The use of purse-seines is bound to be injurious to the fisheries, and if, in addition, Newfoundlanders can be employed by Americans to use these seines, it will have the effect of destroying the Colony's legislation long in force against the use of such seines. Therefore, even the concession of their use under the *modus vivendi* for one year is regrettable, and likely to be followed by bad results.

"ADOPTED PURSE-SEINES.

"To understand the situation, it must be remembered that in ports on the west coast of Newfoundland, Americans have the right under the Treaty of 1818 to catch fish of all kinds. It has heretofore been the practice for the Newfoundlanders to engage in the fall and winter fishing for herring, and then sell their catch to the Americans at the price of 1 dol. 25 c. per barrel, as fixed by a Regulation of the Colonial Legislature.

"This fall and winter fishery should be distinguished from the ordinary taking of herring for bait, because pursued at a different season, and the catch goes into food consumption.

"This fall and winter fishery was naturally very profitable to the Newfoundlanders, but it was interfered with last autumn by the Colonial Government, an action protested against by the Newfoundlanders interested. The reason for this interference was the bringing of pressure to bear on the United States' Congress, because of its rejection of the Bond-Hay Convention. That rejection had greatly annoyed the Premier, Sir Robert Bond, and his interference with the herring fishery of the west coast was due apparently more to a desire for retaliation than to any good reasons of State.

"ADOPTED PURSE-SEINES.

"Personally, I opposed that legislation on the grounds that such interference would drive the American fishermen to the use of purse-seines and other methods which they now threaten to adopt. When the American fishermen came last fall, they found great difficulty in obtaining their supply of herring, because having always relied on the Newfoundlanders, they lacked the necessary fishing equipment. They were thus forced to adopt purse-seines and power launches, when they would probably prefer to go back to the old way of purchasing from the Newfoundland fishermen.

"The Americans claim that their rights of fishery, under Treaty of 1818, may be carried on in any manner, and that they are justified in the use of purse-seines. They contend that they are not liable to interference by any Regulation of the Colonial Government passed since 1818, on the ground that the Colonial Legislature has authority only over its own people and not over citizens of a foreign country enjoying Treaty rights. Therefore, the legislation of the

Colonial House on the one side, and the claims of the Americans on the other side, placed the British Government in an extremely awkward position.

"It is understood that negotiations between the two Governments have been going on for a year, and I gather from the Newfoundland newspapers that they were being carried on with the full knowledge and consent of the Colonial Government.

" WAS GOVERNMENT CONSULTED ?

"When the British Government came to the point that it must either fall out with the United States Government or abandon the Colonial legislation, it is probable that they asked the Colonial Government to withdraw from its attitude on the question. To override the legislation of the Colony without giving the Government an opportunity to state its views or make modifications, would be an outrage. I cannot conceive it possible that such an outrage has been committed. Reading between the lines, I am forced to the conclusion that the Government of Newfoundland was consulted, that it refused positively to modify its course, and that the British Government was thus forced to either make a *modus vivendi* with the United States Government or to quarrel with that Government.

"In my opinion, the *modus vivendi* will afford opportunity for a better solution of the difficulty than could otherwise be the case. The mere fact of making it is not objectionable, provided it was not made without due time for consideration by the Colonial Government.

"Personally, I consider the whole difficulty to have arisen through the Government's unnecessary, and, I think, unwarrantable interference with conditions long in vogue in carrying on the fall and winter fishing. I am in entire accord with the policy of preventing Americans obtaining bait fishing of any kind in those portions of the waters of Newfoundland, if they have no Treaty rights. But this has nothing to do with the fisheries concerned in the *modus vivendi*.

"It should be borne in mind that if the present Government of Newfoundland found itself in a position where it had to abandon a policy which it had deliberately taken up and exploited, there are political reasons why it should prefer to have the abandonment apparently forced upon it by the British Government rather than voluntarily back down. I don't think any hasty expressions of anger at the British Government are justified at present. I am prepared to suspend judgment till I know to what extent the Colonial Government was apprised in advance of the intentions of the British Government."

TORONTO, October 10, 1906.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE,
St. John's, October 24, 1906.
(Received November 14, 1906.)

MY LORD: I have the honour to forward herewith copy of a petition I have received through Mr. M. P. Gibbs, Mayor of St. John's, formerly a representative in the House of Assembly of the constitu-

ency of which Bay of Islands forms a part. This petition purports to be signed by about 90 fishermen, residents of Bay of Islands, and prays "that the *Modus Vivendi* recently entered into between the Government of Great Britain and the Republic of the United States of America respecting the prosecution of the herring fishery in the Bay of Islands by the subjects of the Republic of the United States and the subjects of His Majesty, may be published in the local papers of the Colony."

2. I at once forwarded this petition to my responsible advisers.

It chanced that I was in a position to transmit to my Ministers at the same time:

(a) Your telegram of the 23rd October in which your Lordship states that it is now too late to attempt to withdraw from the arrangement, and expresses the hope that my Ministers will do all that lies in their power to give effect to the *Modus Vivendi*.

(b) Your despatch of the 10th instant, covering copy of the note of the 6th October of the United States Ambassador, and Mr. Gorst's reply thereto of the 8th instant. These papers, it will be seen, make the whole question as to the text and definitiveness of the *Modus Vivendi* perfectly clear. I have at the same time informed my Ministers that your Lordship sees no objection to the *Modus Vivendi* being made public.

3. I am not able to speak as to the position and character of those that signed the petition, but I have no reason to doubt that they are, as represented to be, fishermen and residents of Bay of Islands.

4. The advice I may receive from my Ministers will be promptly communicated to your Lordship.

I have, etc.,

WM. MACGREGOR.

[Inclosure.]

To His Excellency Sir WILLIAM MACGREGOR, K. C. M. G.,
Governor in and over the Island of Newfoundland
and its Dependencies.

The petition of the undersigned humbly sheweth as follows:

1. Your petitioners are residents of Bay of Islands.

2. The principal and practically the only industry which your petitioners have to depend upon for a livelihood is the herring industry, which is prosecuted by them in the Bay of Islands during the spring and fall seasons of the year.

3. Your petitioners have got to depend solely upon the subjects of the Republic of the United States for the sale of the herrings caught by them.

4. Your petitioners have learned from despatches which have appeared in the public press that a *Modus Vivendi* respecting the prosecution of the herring industry at Bay of Islands by subjects of the Republic of the United States and His Majesty's subjects in this Colony, has been entered into between the Imperial Government and the Government of the Republic of the United States. Conflicting reports have appeared and are appearing in the public press in relation to the terms and conditions of the Treaty, and, in consequence, your petitioners are in doubt as to their rights and obligations under the said *Modus Vivendi*.

5. In consequence of the non-publication of the full text of the *Modus Vivendi* in the local press, your petitioners do not know what

their rights and obligations are under the new arrangement. Herrings have already "struck in" in the Bay of Islands, but your petitioners are forced to leave their nets on shore and their boats moored and, in consequence, distress and privation in their homes must ensue. Subjects of the United States of America are in the Bay of Islands prepared to carry on the herring industry in conjunction with your petitioners as it has been conducted for years (with the exception of the season of 1905) which has in the past resulted in mutual profit and advantage to both.

6. The legislation passed by the Parliament of this country in 1905 makes it an offence to enter into contracts and engagements of any kind with subjects of the United States for the prosecution of the herring fishery or the sale of herrings to them. Under the new arrangement entered into, according to despatches which have appeared in the public press, the legislation enacted has been suspended and amendments respecting the rights and duties of His Majesty's subjects and the subjects of the Republic of the United States, have been made.

7. Your petitioners would most respectfully submit that the full text of the Treaty ought to be made public—

(a) In the interest of law and order, and

(b) To enable your petitioners to learn what their rights and obligations are under the existing *Modus Vivendi*, and thus prevent them from unknowingly transgressing the law.

Your petitioners therefore pray that Your Excellency may be pleased to order that the *Modus Vivendi* recently entered into between the Government of Great Britain and the Republic of the United States of America respecting the prosecution of the herring fishery in the Bay of Islands by the subjects of the Republic of the United States and the subjects of His Majesty, may be published in the local newspapers of the Colony;

And, as in duty bound, will ever pray.

Dated this 20th day of October, A. D. 1906.

J. HAYSE
(and 88 others).

[Telegram.]

Governor MacGregor to Lord Elgin.

(Received 10.25 p. m., October 26, 1906.)

I am requested by Ministers' minute transmit the following message:

"With reference to your telegram of 23rd instant, my responsible advisers desire to say that in the opinion which they have expressed respecting the subversion of constitutional rights and over-riding of colonial statutes they are supported by the opinion of the Minister of Justice and of learned counsel of high standing in England, and they propose, in accordance with the advice of said counsel, to test the question as to whether the *modus vivendi* can over-ride existing legislation of the Colony by taking legal proceedings against colonial fishermen who have engaged themselves and proceeded in violation of the law to prosecute the herring fishery."

I have endeavoured to ascertain reference to law under which it is intended to proceed, and shall inform you.

MACGREGOR.

HOUSE OF COMMONS, *October 30, 1906.*

Mr. Ashley asked the Secretary of State for Foreign Affairs, whether it was not usual to obtain the adherence of a self-governing Colony to any agreement with a Foreign Power before applying the provisions of that agreement to that Colony; and, if so, on what grounds this practice was departed from in the case of the Newfoundland fisheries.

Mr. Churchill, in reply, said: "The agreement to which I understand the honourable Member to refer is a temporary arrangement intended to avoid the occurrence of untoward incidents during a discussion which has become necessary in consequence of action which the Colonial Government has taken in spite of the representations of His Majesty's Government. The usual course has been followed in regard to this temporary agreement of consulting the Colonial Government at every step; but the ultimate responsibility for the action taken by Great Britain in order to give effect to her treaty engagements with foreign Powers necessarily rests upon His Majesty's Government. My honourable friend will discover in the action of Lord Salisbury's Government in 1890 in the matter of the *modus vivendi* with France respecting the Newfoundland lobster fishery, should he find the time to examine it, ample and conclusive precedent for the course adopted."

["Evening Telegram," October 31, 1906.]

PUBLIC NOTICE.

The following Sections of the Act entitled, "Of the Exportation, Sale, &c., of Bait Fishes," are published for general information:—

Section 1. No person shall,—

1. Export or cause or procure to be exported or assist in the exportation of; or

2. Haul, catch, take or have in his possession for the purpose of exportation; or

3. Purchase or receive in trade or barter for the purpose of exportation; or

4. Take, ship, or put or haul on board, or assist in taking, shipping, or hauling on board of any ship or vessel for any purpose whatever; or

5. Carry or convey on board of any ship or vessel for any purpose whatever, any herring, caplin, squid or other bait fishes from, on or near any part of this Colony or its dependencies, or from or in any of the bays, harbours or other places therein, without a license in writing to be granted and issued as hereinafter provided.

Section 9. Any person who shall violate any of the provisions of Section 1 of this Chapter or any of the subsections thereof; or

1. Use, dispose of or deal with any bait fishes otherwise than in accordance with the terms of the affidavit made upon application for a license or with the terms of such license; or

2. Make any untrue statement in any affidavit upon application for a license under this Chapter; or

3. Obtain a license under this Chapter by means of any false statement or misrepresentation, or by the suppression or concealment of any material fact, shall be liable for every first offence to a penalty not exceeding one thousand dollars or imprisonment for a period not exceeding twelve months.

Any person convicted of a second or subsequent offence under this Chapter shall, on conviction, be subject to imprisonment with hard labour for a period of not less than twelve months.

ELI DAWE,
Minister of Marine and Fisheries,
per W. B. PAYN.

OFFICE OF MARINE AND FISHERIES,
October 31, 1906.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's, November 1, 1906.*

(Received November 14, 1906.)

MY LORD: I have the honour to enclose herewith copy of a letter I have addressed to my Prime Minister with reference to my giving approval to certain minutes of the Executive Council.

2. It is customary in this Colony for Minutes of Council to be prepared by the nine members of Council sitting as a Committee of Council. A meeting of the Council is held the first Wednesday of each month at Government House, presided over by the Governor, at which the proceedings of the previous month are read over, approved, and signed by the Governor.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

NOVEMBER 1, 1906.

DEAR SIR ROBERT BOND: At the next monthly plenary meeting of the Honourable the Executive Council certain minutes of the Committee of Council, referred to specifically below, will come up for approval, minutes which have reference to matters that are so clearly and so directly connected with the foreign relations and the foreign policy of the Empire, that I feel it would be inconsistent with my duty to give to them an unqualified approval without the previous sanction or knowledge of the Secretary of State. I am sure the members of the Executive Council will deem it reasonable that pending reference to the Secretary of State I should ask that while I approve the minutes generally, a copy of this paper with the following qualifications should be entered in the Minute Book of the Council:

1. The Minute of Council of 11th October conveyed to the Secretary of State by telegraph on the 12th October.

(a.) The statement that His Majesty's Government has ignored the representations and entreaties of this Government is, it seems to me, so expressed as to be liable to be misunderstood. The representations of this Government are certainly entitled to very careful and respectful consideration; and personally I believe they have received

the close and earnest attention of His Majesty's Government, in the anxious desire to give effect to them as far as the foreign relations of the Empire made this practicable.

(b.) I must refrain from committing myself to any opinion as to whether the arrangement concluded by His Majesty's Government is subversive or otherwise of the constitutional rights of the Colony; or whether any constitutional rights of the Colony can legally or expediently nullify or neutralise the arrangements that His Majesty's Government finds it necessary to enter into with foreign nations in the interests of the Empire as a whole; for I cannot fail to recognise the fact that this question has another aspect than that looked at from the point of view of constitutional rights in a rigid legal sense. There is the important consideration of Imperial or public expediency, and I feel confident that the experience and judgment of the Members of the Executive Council of this Colony will enable them to concur with me that this factor in the problem is a weighty one, and one that must of necessity be most carefully considered by His Majesty's Government.

2. The Minute of Committee of Council of the 25th October communicated to the Secretary of State by telegraph on the 26th October.

(a.) In this Minute the Committee of Council express the intention of taking legal proceedings against Colonial fishermen that have engaged themselves to Americans for the herring fishery. As the *modus vivendi* seems to me to pledge His Majesty's Government to the Government of a foreign Power that such engagements shall not be penalized, I am not able, without instructions, to subscribe approval to this proposal.

I understand that the proceedings proposed would be confined to Colonial fishermen, and I entertain no doubt that in the action taken American subjects and property would be left unmolested. But even with that reservation I cannot but see that the effect of such proceedings might be very embarrassing to His Majesty's Government in conducting the negotiations now pending with the Government of the United States, and it is on this ground that I have concluded that I should not give an unqualified approval to this Minute without being authorised by the Secretary of State to do so.

(b.) At the same time I cannot forget the fact that it is only fair to these fishermen, whose loyalty to the Empire is genuine and intense, to believe that they have acted in good faith in engaging themselves in a way that they regard as permitted and allowed by an arrangement entered into by His Majesty's Government, probably some of them the same men that were similarly engaged last year at a time when the law under which I understand they would be prosecuted was in force, and when the act of the men concerned was without the sanction, which they doubtless regard as valid, of a *modus vivendi* of which the Secretary of State has said in his telegram of the 23rd October that His Majesty's Government "trust that your Ministers will do what lies in their power to see that it is properly observed."

It is also a consideration with me that I do not at present know how the proposed test would be carried out in practice so as to be of value. From the fact that the Committee of Council deemed it necessary to consult learned counsel in England, it is manifest that the question to be tested is one of extraordinary legal complexity. It

is, therefore, not apparent how a satisfactory test could be arrived at by legal proceedings against local fishermen before the Stipendiary Magistrate at Bay of Islands. Local fishermen are not able of themselves to argue on the validity of an act of State or on the legal and constitutional effects of maritime jurisdiction, or of this *modus vivendi*, performed or entered into by His Majesty's Government in the desire to do the best they can for this Colony and for the Empire. They are probably not in a position to employ Counsel even at Bay of Islands, still less to obtain the opinion of English Counsel. Presumably the test cases would be brought before the Supreme Court, and thence, if the test is to be finalized, before the Judicial Committee of the Privy Council. But access to the superior courts, so far as the fishermen are concerned, could probably be had only by this Government meeting the expenses of both sides if legal justice is to be carried to a final and convincing test. But I should hope that long before that had been reached the present *modus vivendi* would be set aside by a treaty fairly satisfactory to each of the nations concerned.

I have, &c.,

WM. MACGREGOR.

The Right Honourable

SIR ROBERT BOND, P.C., K.C.M.G., &c.,
Prime Minister.

HOUSE OF COMMONS, *November 5, 1906.*

Sir Gilbert Parker asked the Prime Minister whether the Government was aware of the feeling existing in the Government and among the people of Newfoundland due to the late agreement made with the United States in relation to the fisheries; and whether the correspondence between this Government and that of Newfoundland would be laid upon the Table at the earliest moment, and whether this Government was aware that the Newfoundland Government had decided to test the validity of the *modus vivendi*, and enforce the Act which forbids the Newfoundlanders to fish on foreign vessels in Colonial waters; and what action the Right Honourable Gentleman proposed to take.

Sir H. Campbell-Bannerman, in reply, said: "The Governor of Newfoundland keeps His Majesty's Government fully informed as to the state of public opinion in the Colony on the fisheries question. The Secretary of State for Foreign Affairs has already promised that the correspondence with the Colonial Government on the subject of the provisional agreement with the United States shall be laid upon the Table, and the preparation of the Papers is being pushed forward with all possible speed. His Majesty's Government are aware that the Newfoundland Government have decided to enforce the Bait Act. I must decline to say whether any, or what, action will be taken."

HOUSE OF COMMONS, *November 5, 1906.*

Mr. Ashley asked the Under-Secretary of State for the Colonies, if, in view of the fact that the Order in Council carrying into effect the *modus vivendi* with France of 1890, respecting the Newfound-

land lobster fishery, was not issued till the 23rd of June, 1891, and contained a declaration that it was so promulgated under powers vested in Her Majesty by an Act passed by the Legislature of that Colony, he would explain why his Majesty's Government have not followed a similar course in the case of the *modus vivendi* with the United States Government respecting the Newfoundland fisheries.

Mr. Churchill, in reply, said: "The Honourable Member appears to assume that effect was not given to the *modus vivendi* concluded with France in 1890 until June, 1891. The *modus vivendi* was made only for the season of 1890, and expired at the end of that season. Her late Majesty was bound by it from the date of its conclusion and gave effect to it throughout the season of 1890. Lord Salisbury, however, renewed it for another year in March, 1891. The Colonial Act under which the Order in Council referred to was issued was not passed until it had been made clear to the Colony that in the absence of Colonial legislation an Imperial Act would be passed. Lord Salisbury's Government actually introduced a Bill into Parliament, and it was only withdrawn when the Colony undertook to legislate. The *modus vivendi* was renewed by Lord Salisbury before that undertaking was given. The *modus vivendi* which has been concluded with the United States Government applies only to the present winter herring fishery, which will end about Christmas; the Colonial Legislature will not meet again until after it is over. Without at this moment entering upon legal considerations, I would point out that there would have been no object in concluding the *modus vivendi* at all if effect was not to be given to it until after the end of the fishery to which it was to apply."

HOUSE OF COMMONS, November 7, 1906.

Mr. Ashley asked the Under-Secretary of State for the Colonies, whether the provisional consent of the Newfoundland Government was obtained in 1890 to the *modus vivendi* with France respecting the Newfoundland lobster fishery, previous to the Act passed by the Colonial Legislature in May, 1891.

Mr. Churchill, in reply, said: "The Act of 1891 did not refer to the *modus vivendi* of 1890, but to that of 1891, and I have already indicated, in reply to the Honourable Member's question of the 5th instant, that effect was given by Her late Majesty's Government to the *modus vivendi* of the former year in the absence of any consent on the part of the Newfoundland Government."

Lord Elgin to Governor MacGregor.

[Telegram.]

(Sent 7.5 p. m., November 9, 1906.)

Your telegram, 3rd November. As your Ministers are well aware, the *Modus Vivendi* was arranged with a view to the prevention of action which would embitter the discussion proceeding between His Majesty's Government and the Government of the United States as

to the proper meaning of the treaty of 1818—a discussion rendered inevitable by the policy of your Ministers.

With full knowledge of these facts your Ministers have deliberately decided to take action which may immeasurably increase the difficulty of the task which Newfoundland has imposed upon Great Britain. In these circumstances I have to inform your Ministers that, in endeavouring to frustrate the purely temporary measures which His Majesty's Government consider most likely to lead to a successful termination of the negotiations with the United States, they incur a grave responsibility which His Majesty's Government decline to share. His Majesty's Government will endeavour in the future, as in the past, to defend the claims of Newfoundland under the treaty of 1818 to the best of their ability, but if the difficulties in their way become increased your Ministers must bear the blame.

ELGIN.

Governor MacGregor to Lord Elgin.

[Telegram.]

(Received 3.16 p. m., November 16, 1906.)

"Daily News" this morning states summonses taken out Bay of Islands against two men shipped on schooner *Ralph Hall*. Alexander advising Americans not resist, but rather facilitate trial of men that question may be settled in Court. Apparently *Fiona* absent serving summonses.

MACGREGOR.

Governor MacGregor to Lord Elgin.

[Telegram.]

(Received 5.1 p. m., November 16, 1906.)

Inspector, Police, Bay of Islands, reports, 14th November, about 200 men engaged in American ships, Bay of Islands. Two summonses issued for Alexander Dubois and George Crane, Woods Island, for shipping herring on American ship *Ralph Hall*, 12th November, without a licence. Summons returnable 15th November. No reason anticipate disturbance.

MACGREGOR.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's*, November 20, 1906.

(Received December 4, 1906.)

MY LORD: I have the honour to transmit, for your information, a report of the public proceedings that took place in Court at Bay of Islands in connection with the legal prosecutions instituted against the two fishermen Alexander Dubois and George Crane, who were convicted of a violation of the Bait Act by putting a barrel of herring on board the American schooner *Ralph L. Hall*.

It is not quite clear as yet whether the two men in question, Alexander Dubois and George Crane, have returned to work for the American employer. I am asking the Honourable the Attorney-General to obtain for me precise information on this point.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

[Extract from "DAILY NEWS," November 20, 1906.]

THE STORY OF THE FAMOUS TRIAL.

[From our own Correspondent.]

To the history being made by the Government respecting the herring fishery at Bay of Islands, the trial of Alexander Dubois and George Crane, of Woods Island, contributes an important episode. Crane and Dubois were charged with a violation of the Bait Act, the summons setting forth that they "did unlawfully put on board the schooner *Ralph L. Hall*, of Gloucester, Massachusetts, in the United States of America, a quantity of bait fishes, to wit, a barrel of herring, without a licence, for that purpose, contrary to the provisions of Consolidated Statutes (second series), chapter 129, entitled 'Of the exportation, sale, &c., of bait fishes.'"

Upon this charge the prisoners were arraigned, and through their counsel, W. R. Howley, of St. John's, pleaded not guilty, the contention being put forward that the court had no jurisdiction to deal with the alleged offence.

Kent, K. C., for the Government, stated that the charge was made under the Bait Act, and called Inspector O'Reilly, who said he was complainant, as special commissioner to enforce the Act. Inspector O'Reilly's evidence went to show that, being on the bridge of the cruiser *Fiona*, at Woods Island, on Monday, November 12, he saw accused go alongside schooner *Ralph L. Hall*, from their nets. One of the men was in a dory, the other on the deck of the schooner. The former "dipped" up about two and a half tubs of herring, and passed them aboard the vessel to her deck. O'Reilly went on board the schooner the same evening, saw Captain Hall (owner) and a number of fishermen in the cabin. He (O'Reilly) had some talk with the men, though not the prisoners, particularly, and told them summonses would be served, at the same time asking if they had licences. Later he had conversation with Dubois, who admitted having put on board a little over one barrel of herring, and that he (Dubois) had no licence. The accused had only taken three barrels of herring in all at Woods Island. Inspector O'Reilly also stated that Bait Act proclamations had previously been posted at Bay of Islands and other settlements.

Timothy Costello, customs officer at Woods Island, was also on board the *Fiona*, and testified to seeing accused deposit herring on board the schooner from their dory. He went with O'Reilly on board the schooner, and corroborated testimony as to the conversation which took place.

Cross-examined by Mr. Howley, Costello said the *Ralph L. Hall* hailed from Gloucester, was fishing at Woods Island, and that Woods Island was situate between Cape Ray and Quirpon Islands, on Treaty Coast.

James Collins stated that he was tide waiter on board the *Fiona*, and, generally, corroborated the previous evidence.

Cross-examined by Mr. Howley, Collins said the *Fiona* was about 200 yards from the schooner. He had a glass, and in the broad light of day he was watching the movements of the men on the schooner. His orders were to be "on the watch," and he carried them out to the best of his ability. He did not know that part of his duty as tide waiter was to watch fishermen who sold herring, but he did it. He supposed the Government paid his salary, as cheques came from that source. Everybody on the *Fiona* was "watching."

Mr. Howley, for defence, stated that he would content himself with proving that his clients were part of the crew of the schooner *Ralph L. Hall*, and asked for a short recess in order to consult his clients, whom he had no chance of conversing with previously. The magistrate (Levi March, esq.) granted a short recess for that purpose. After consultation, Mr. Howley called George Crane, who testified that he was a fisherman, belonging to Woods Island, fishing for Captain Hall, of the schooner *Ralph L. Hall*. He was shipped on Thursday, November 8th, outside three-mile limit, and on Monday was catching herring at Woods Island for Captain Hall.

Cross-examined by Mr. Kent, K. C., Crane said he went outside the limit in the schooner *Lucy*, three miles outside Wiebald. Was engaged to ship for \$1 per barrel, boats and gear being all found by the schooner.

Alex. Dubois' evidence was to the same effect. He was one of the crew of the *Ralph L. Hall*, and fishing for her.

At the conclusion of the defendants' evidence, Mr. Howley addressed the court, and asked that the charges against the accused be dismissed. First, on the ground that defendants had not violated any statute, or been guilty of any breach of the Act. He argued that, while the Bait Act provided a penalty for taking fish, section 22 provides that subjects of States in amity with His Majesty are exempt from penalty. He submitted that the United States of America, being in amity with Great Britain, her subjects were not liable to be penalized under the Bait Act. He further contended that the United States has express and properly defined rights on the coast, including the scene of action at Woods Island. The Bait Act expressly excepted Americans from its provisions, was directed solely against the French at the time of its enactment, and was never intended to be employed against Americans. Mr. Howley argued that the defendants had been regularly engaged by Americans without the jurisdiction of Newfoundland; that they were, to all intents and purposes, American subjects, certainly American servants, and so removed from the control of Colonial laws or officials. The herring fishery had been conducted from time immemorial without any interference by Newfoundland. The men who fished on American vessels were not Americans, but Danes, Swedes, Irishmen, Nova Scotians, Russians, Jews, and almost every nationality on the face of the earth. It was never intended by the Act to define who should be shipped, and if the accused were punished it simply meant that *every nation could fish*

in the waters of Newfoundland except Newfoundland men to whom the fish unquestionably belonged by every right and act of justice. Any attempt by the Newfoundland Government to enforce the Bait Act against Americans brought us face to face with the fact that everybody but Newfoundland men may profit from the fishery of their own land, at their own doors. Further, given that all the foregoing contentions be not sustained, the question as to whether or not the Treaty of 1818 empowers the Newfoundland Government in its present course, or, rather, the question as to what that Treaty means, is not within the jurisdiction of the magistrate, but must be left to a higher tribunal for interpretation.

Kent, K. C., replied, arguing that the right given by treaty only extends to *bonâ fide* inhabitants and citizens of the United States. He claimed that the magistrate had full power to investigate and determine whether the accused had violated the law, and, if so, to inflict punishment.

Both addresses, while brief, were argued with considerable force, and apparently listened to with marked attention by the presiding magistrate.

At the conclusion of addresses by counsel, the magistrate proceeded to read his decision, a decision evidently prepared with care, long before the trial began, a decision said to have been prepared for him by the Crown, and for those reasons calculated to bring law and justice into contempt, disrepute, and ridicule. The decision intimated that, upon questions of law, a higher tribunal would pronounce, but as to the guilt of accused in violating the Bait Act, Magistrate March had no doubt. He thereupon pronounced sentence of a five hundred dollar fine, or three months' imprisonment, upon each of the accused. In presenting his decision, the magistrate even read the words: "Given under my hand and seal, this 16th day of November, 1906."

The whole proceeding was so ludicrous, so entirely free from judicial decorum, so foreign to decency and justice, and so strongly savouring of comic opera, that the small audience was not slow in manifesting its disgust and contempt for such manifestations of balderdash and tomfoolery, furnished under the covering of a court house and by virtue of legal process.

Immediately after sentence had been delivered, two of the best-known and most respectable residents of Bay of Islands voluntarily offered bonds for the release of the accused, and the names of James H. Baggs and Maurice E. Boland were accepted by the magistrate to this end.

Crane and Dubois have gone back to the work of catching herring and earning food and comforts for their families, which the Government, by its policy of stupidity, had sought to prevent. The circumstances surrounding the trial of those two unfortunate fishermen, and some comparisons as to the application of law and justice, as administered under the present Governmental *régime* in this locality, must remain for another writing. Evidence accumulates daily, emphasizing the fact that officialism is made subject to law, and that men paid with public taxes for the performance of public services, exceed their duties on all conceivable occasions, and continuously "play such fantastic tricks before high heaven as makes the angels weep."

Bay of Islands, November 16, 1906.

*Governor MacGregor to Lord Elgin.*GOVERNMENT HOUSE, *St. John's*, November 21, 1906.

(Received December 4, 1906.)

MY LORD: In continuation of my despatch of the 20th instant, I have the honour to enclose herewith an extract from the "Daily News," of *St. John's*, of this day's date, having reference to the trial of the two men Dubois and Crane for putting herring on board an American vessel without a licence.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

SIDE LIGHTS ON THE TEST CASE.

[From our own Correspondent.]

If contempt for law and order does not grow with the fishermen of Bay of Islands, those who are responsible for applying the law will have little to answer for. A special brand seems to be in force here. Generally throughout this Colony, and, indeed, in all British possessions, a person charged with an offence is regularly summoned before a magistrate, reasonable opportunity is given to frame a defence, and decency is at least aimed at in the proceedings. Here it is different. Men charged with offences are inveigled to the court, by a back way, at an unreasonable hour, there to find a magistrate waiting to issue summons, try the culprit, and perpetuate a farce against which British fair play and justice revolts.

In "Truth's" "Pillory" there is depicted a Perth Bailie, who considered loitering on the foot-path exactly twice as atrocious a crime as for a man to beat his wife with the tongs. The same wiseacre punished a man twice as heavily for an assault on his own bicycle, as a man who savagely attacked a defenceless girl. There are ample opportunities over here for the pen behind "Truth's" "Pillory."

The circumstances surrounding the recent arrest, trial and punishment of two fishermen, Alex. Dubois and George Crane, as compared with the punishment meted out to an American millionaire law-breaker, a week before, will serve for purposes of illustration.

On Monday, November 12th, these two fishermen, shipped on an American vessel, were catching herring, in pursuit of an honest living. Crane is 20 years old, unmarried; Dubois, 25 years old, with a wife and small family. Both are uneducated, the latter being able to read but a little. Two hundred yards distant from these men lay the cruiser *Fiona*, expensively equipped at the cost of fishermen taxpayers, with her full ship's company "on watch" to prevent honest men from earning a living.

Tide Waiter Collins, at the trial, swore that they all had orders "to be on the watch," and that at least four of these watchers on the *Fiona* had glasses, scanning the movements of men only 200 yards away. An attempt to take the fishermen from the American vessel was frustrated by her captain, who warned Inspector O'Reilly against such unlawful act.

The *Fiona* returned to Birchy Cove on Monday, when it was given out that summonses had been issued, the men would be arrested, and trial was set down for two o'clock on Thursday. Wednesday

morning, the *Fiona* left for the outer arms, and towards noon the American steamer *Potomac* followed.

During the afternoon Inspector O'Reilly was informed by Commissioner Alexander, representing the American Government, after consultation with the captain of the schooner *Ralph L. Hall*, that if he (O'R.) wanted to take two men for trial, there would be no objection on the part of Captain Hall, as the latter was anxious to have the matter settled, and the "test case" concluded. To this O'Reilly answered from the bridge of the *Fiona*, then in Middle Arm, "all right, sir." The *Fiona* proceeded to anchorage, and the *Potomac* returned to Birchy Cove.

Despite the assurances given by Commissioner Alexander and Captain Hall, two men were sent at midnight, stealthily on board the schooner, looking for Crane and Dubois. It is well known that men fishing are frequently some distance from their ship, and the two in question had their nets set in Penguin Cove, one of the many in Middle Arm. On Thursday, rather than go to the schooner, the *Fiona* scoured the arm, and ultimately, about 2.30 p. m., came upon her prey.

The men were quietly taking herring from their nets, which were full. Without ceremony, they were ordered on board the cruiser, leaving their nets and gear, with all the herring, at the mercy of wind, tide, and whatever else might work destruction. The *Fiona* was then headed for Birchy Cove, but anchored at Woods Island, where she remained all night in idleness. Next morning she steamed to Humber Arm, reached to anchorage at Birchy Cove at breakfast time, and the two prisoners were hustled to the court-house for trial.

Word was sent to Petrie's Hotel to Mr. Kent, K. C., that the trial was to proceed immediately. Through the courtesy of Mr. Kent, Mr. Howley became acquainted with the facts, and but for this no one would have known anything about the unsavoury proceeding. The trial has been dealt with in a former writing. *So much for two poor and struggling fishermen.*

Now for the other end of the legal farce.

About November 7th, Sergeant Sheppard, doing game preservation duty on what is known as the "reservation," detected two American sportsmen, viz., Hon. Judge T. J. O'Connor and Mr. H. E. Knuff, of Johnstown, Pennsylvania, in the act of shooting caribou in the water, on the "reservation." These men had fired twenty-one shots at the swimming caribou, in hearing of the constable.

One of these law violators is Judge of the Court of Common Pleas, in his State. Both are educated, intelligent, and rich in this world's goods. Both knew they were violating the law, and consequently deserved condign punishment for its violation. Sergeant Sheppard accompanied these two men by train, having first notified Magistrate March of his action.

Did the magistrate proceed to his high court of justice, on the hill, to await these law-breakers and impose a penalty commensurate with their offence, and calculated to deter others from like trespassing? Certainly not!

On the afternoon of Wednesday, November 7th, Magistrate March left his home and tramped along the railway track, a distance of six miles, to meet the rich men from the West. At Riverhead the magistrate boarded the incoming train, and, as it sped along back to

Birchy Cove (which only occupies twenty minutes), he heard the complaint of Sergeant Sheppard, and then apologetically asked the law-breakers if they would prefer to wait over and stand trial, as do other wrongdoers, or "pony up" and proceed. Law-breakers usually dislike more notoriety than is necessary, and these two violators of a law for which many of our own Newfoundland men have been heavily fined or jailed, naturally concluded they would pay up, which they did to the tune of an insignificant \$30 apiece.

It would be inconvenient, doubtless, for these men to be detained here two days, subject to the gaze and comment of the crowd who might be present at their trial, and the convenience of this Judge and his travelling companion from Pennsylvania weighed down the legal balance that is applied to the "common herd" of Newfoundland, so that their seat was made soft, and their transgression minimized by an obliging magistrate.

In the case of two unfortunate Newfoundland fishermen, striving to earn an honest living for their families by catching fish which a benignant Providence has placed within easy reach of them, and actually successful in hauling a little over one barrel, worth, perhaps, \$1.50, a fine of *five hundred dollars*, or *three months in jail* is imposed. The two fishermen are hounded and hunted all over the Bay of Islands Arms, captured, obliged to leave their nets full of herring in the water, with probable destruction in store for them. They are hustled to the court-house early in the morning, where the magistrate is waiting with judgment prepared and written before the trial proceeds, ready to "salt" them for an offence that hundreds of their fellows are guilty of, but are not prosecuted for.

In the case of the two rich American sportsmen, the same magistrate metes out an entirely different sentence for a much graver offence. They are allowed to travel in a Pullman car, surrounded with all the ease and elegance at the disposal of the railway company, with white-coated servants dancing attendance upon their every requirement, and a policeman in the capacity of a genial body guard. The magistrate sacrifices his judicial importance, leaves his square judgment seat beside the well-filled, warm court-house "bogey," and tramps the railway track a distance of six miles, in disagreeable weather, in order that rich men may not be inconvenienced. Surely no greater travesty upon justice could be recorded than the foregoing. And as surely men living in this locality, paying taxes, as well as taxpayers all over the Colony, will arise and unite in effectually and speedily ending so disgraceful and disreputable a condition of affairs.

In the condemnation of this shameful application of the law, none are more pronounced than the honest law abiding American sportsmen, all of whom declare the punishment inflicted upon Judge O'Connor and his companion to be an inexcusable outrage, destined to make Newfoundland a target for the contempt and ridicule of the outside world. These gentlemen, many of whom have been here during the past two weeks, unite in the contention that every visiting sportsman knows the law; that they are intelligent and responsible, and that any violation of well-known enactments should invariably be visited with prompt, proper, and regular punishment, without discrimination and without subserviency.

We have the cruiser *Fiona* constantly tramping the arms of Bay of Islands, expensively equipped and officered at public expense,

armed with spy glasses by day and lanterns by night, searching for some poor creature who is selling a barrel of herring from which to buy a dollar's worth of food for his family, and a magistrate ready and willing to jump on such an offender with a cruel and unreasonable penalty. And there is the same magistrate, tramping, probably foot-sore and wearily, along the tiresome railway ties, to meet a wealthy offender from outside the Colony, practically apologising for being alive, and incidentally and with consummate meekness soliciting a contribution of \$30 to the Colonial exchequer in return for a violation of the game laws, that our own people have been heavily fined or imprisoned for violating, as was the case in the Burgeo country and other parts of the Colony.

In view of these circumstances, one may reasonably wonder whether they are wholly the actions of the local judiciary, or whether they are dictated from the headquarters of our judicial system at the capital, and in their extremity, an oppressed people may righteously exclaim—"How long, O, Lord, how long," must this intolerance and injustice continue?

Bay of Islands, November 17, 1906.

Governor MacGregor to Lord Elgin.

[Telegram.]

(Received 8 a. m., November 22, 1906.)

I have had personal interview with Inspector O'Reilly who has arrived from Bay of Islands at St. John's, Newfoundland.

(1.) No ill-feeling towards American ships on the part of Newfoundland fishermen, and no interference with American ships.

(2.) About forty American ships, about twenty Canadian ships, about fourteen Newfoundland vessels, Bay of Islands; three vessels loaded, sailed for Gloucester.

(3.) Herring fishing good, American ships will be able to complete loading wants as far as one can see.

(4.) American ships not making use of purse seines, have been used very little, no room for them in arms Bay of Islands.

(5.) Licences not issued to fishermen, who supply herring Canadian ships, but Canadian ships are licensed vessels, no American ships are licensed vessels, and no licences issued to catch for American ships.

(6.) There has not been Sunday fishing or very little by American ships, and very little night fishing.

(7.) Newfoundland fishermen to be paid by results; on American ships 1 dollar per barrel; American ships supply appliances and food.

(8.) Alexander has been on friendly terms with Newfoundland officers; American ships consult with Alexander on all points raised, and are guided by his careful advice; Alexander understands position, and endeavours to prevent trouble.

(9.) Neither master nor owner American ships offered any opposition to legal proceedings against Dubois and Crane, but rather facilitated matters advised by Alexander.

(10.) Dubois and Crane have gone home.

(11.) Legal proceedings produced no result. There is no excitement; fishermen are at work as if nothing had happened.

(12.) Total of fishermen Bay of Islands estimation (*sic*) 1,600 to 1,700; about 400 engaged with American ships.

(13.) Only fishermen engaged with American ships supply American ships with herring; fishermen engaged and not engaged supply herring to Canadian ships.

(14.) Captain Anstruther affords assistance to Inspector, giving every help, often see each other.

(15.) All American ships have entered Customs House, and Light Dues have been paid without any trouble.

(16.) American ships have observed in good faith the conditions laid down in *modus vivendi*.

(17.) About eight American ships brought over quite full crews; others hoped vacancies would be filled from Newfoundland.

(18.) No trouble expected if matters remain the same as at the present time, but enforcement of Bait Act in general might produce disturbance.

MACGREGOR.

Admiralty to Colonial Office.

ADMIRALTY, November 22, 1906.

(Received November 24, 1906.)

SIR: I am commanded by my Lords Commissioners of the Admiralty to transmit herewith, for the information of the Secretary of State for the Colonies, copy of a letter, dated 5th November, which has been received from the Senior Naval Officer, Newfoundland Fisheries, relative to fishery matters.

I am, &c.,

EVAN MACGREGOR.

[Inclosure.]

"*Brilliant*," at Birchy Cove, November 5, 1906.

SIR: In continuation of my letter of 24th October, 1906, on the situation here with regard to the autumn herring fishery, I have the honour to report that matters are proceeding peaceably and quietly so far.

Although I have not yet been able to get Mr. Alexander's signature to the arrangement which we drafted together, on account of the difficulty of communicating with all the agents of the firms concerned, yet he has assured me that no more purse seining will take place inside the Heads unless circumstances alter, and that none has, in fact, taken place since our previous interview.

As he foresaw, several more American schooners have arrived, furnished with purse seines and manned by Gloucester crews, who are not as yet prepared to bind themselves by any arrangement which might hinder the success of their season; they wish to keep their liberty to use purse seines, though up to the present they have not actually used them as far as I know.

2. There has been considerable movement of schooners and boats as the season gets into full swing, but the hauls up to the present have been only moderate.

There is a fairly good show of herring in all three arms, but they have not definitely settled yet.

3. I had an interview with Inspector O'Reilly, of the *Fiona*, on her arrival. He did not inform me of any untoward occurrences, and gave it as his opinion that as long as a British man-of-war was here there would be no trouble.

4. Three schooners have sailed with full fares: one American, one Canadian, and one locally owned, or, rather, chartered.

5. On the 31st ultimo the *Potomac* sailed for Sydney to coal. She is expected back in three or four days.

6. On 3rd November the Magistrate came on board and showed me a Public Notice (enclosed) quoting sections of an Act "Of exportation and sale of bait fishes," which had just been promulgated. He said that after the issue of the Notice the Newfoundland Government intended to take legal proceedings against Newfoundland fishermen who shipped on board American schooners, so as to test the validity of that portion of the *Modus Vivendi*, which says that "The shipment of Newfoundlanders by American fishermen outside the three-mile limit is not to be made the basis of interference or to be penalized." He also gave me to understand that the view of the Newfoundland Government is that the Imperial Government had trenched upon the rights of Newfoundland by agreeing, in the *Modus Vivendi*, that certain portions of the Act of 1905 "will not be regarded as applying to American fishing vessels," and that this Public Notice is specially designed to bring matters to an issue. It was further hoped that its publication might prevent any more Newfoundland men from shipping in the American schooners and thus cripple the American fishing almost entirely, or that even if the men did ship they could be harassed and hampered under the Act quoted, and that this might hinder the American fishermen to some extent.

He showed me a newspaper in which it was frankly avowed that the intention and hope was to embarrass the British Government in their relations with the United States.

The date of the passing of the Act being omitted in the Public Notice, it will be difficult for the ordinary fisherman to read it in its entirety, if they wish to—perhaps some of the older men may know that the extracts are from the Bait Act of 1889. I hear that the Newfoundland fishermen have been told locally that they will render themselves liable to a penalty of \$1,000 or 12 months in the Penitentiary if they ship on board American schooners. As 40 or 50 more American schooners are said to be coming here, whose skippers will probably expect to fill up their fishing crews with Newfoundland fishermen either from Bonne Bay or Bay of Islands, it is very important to both Newfoundlanders and Americans to know exactly how they stand.

This forenoon (5th November) two American skippers and three Newfoundland fishermen came on board to ask me to tell them how matters stood, as the Newfoundland men were afraid to fulfil their engagement to ship.

I read to them the *Modus Vivendi*, giving them in writing that portion which deals with the shipment of Newfoundland fishermen by American schooners. I also read to them certain other portions of the Bait Act of 1889, including paragraph 22, which says, "Nothing in this Act shall affect the rights and privileges granted by Treaty

to the subjects of any State in amity with Her Majesty." I also read them the first part of the Treaty of 1818, and gave it as my opinion that they could safely trust the British Government to abide by the terms of the *Modus Vivendi*; at the same time I pointed out that I understood from the Magistrate that it was the intention of the Newfoundland Government to bring forward a test case on this very point; but I added that I felt sure that His Majesty's Ministers had not entered into an agreement with the Government of the United States without being quite sure of all the legal aspects connected with the points at issue. I explained that I did not consider it part of my duty to prevent arrests by the Colonial Police for alleged breach of Colonial laws in a self-governing Colony, but that if shipment by Newfoundland fishermen in American schooners was made a basis of interference or was penalised, the fact should be brought to my notice, and I should report the matter to the Imperial Government, who might be trusted to see justice done.

7. I have had one complaint as to fouling nets and cutting gear, which I have not yet been able to investigate. I have issued to fishermen generally extracts from the Rules and Regulations for Newfoundland Fisheries, with the view of preventing any more such cases.

8. It is my intention to remain here for the present, to be in touch with whatever action the Newfoundland Government may take subsequent to the Public Notice in question.

I have, &c.,

ROBT. H. ANSTRUTHER,
Senior Naval Officer, Newfoundland Fisheries.

THE SECRETARY OF THE ADMIRALTY.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE,
St. John's, November 22, 1906.
(Received December 4, 1906.)

MY LORD: I have the honour to transmit herewith, copy of a letter I have this day received from Mr. William R. Howley, Solicitor for Alexander Dubois and George Crane, and for James H. Baggs and M. E. Boland, of Bay of Islands.

I am forwarding a copy of Mr. Howley's letter to my Ministers, and am inviting them to offer, for Your Lordship's consideration, any observations that they deem requisite.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

RENOUF BUILDING,
St. John's, Newfoundland, November 22, 1906.

SIR: I beg to lay the following facts before you and to request that you will draw the attention of the Imperial Government thereto.

I am directed by George Crane and Alexander Dubois, the parties to whom they refer, to invoke the protection of Your Excellency and of the British Government.

Crane and Dubois are fishermen, residents of Wood's Island, Bay of Islands. On Thursday, the 8th day of November last, they proceeded beyond the jurisdiction of this Colony, to wit, to a point more than three miles from the coast of Newfoundland, and shipped to Captain Hall, of the schooner *Ralph L. Hall*, of Gloucester, Mass., in the United States of America, as part of his fishing crew, for the purpose of prosecuting the herring fishery during the current season on the west coast of this island, and on a portion of the coast on which the Americans have rights of fishery under the Treaty of Washington of 1818.

These two men took this step *bonâ fide*, relying on the *modus vivendi* recently agreed upon between Great Britain and the United States relative to this fishery, which agreement has been published by the Imperial Government, and also relying on the assurances given the fishermen of Bay of Islands as to their rights and privileges by the Commander of the British warship *Brilliant*, which ship is now at Bay of Islands.

After shipment these men came inside the waters of this Colony and proceeded to catch herring as part of the fishing crew of said schooner. On Monday, the 12th November, they were engaged in putting herring on board the vessel at Wood's Island.

On Wednesday, the 15th day of November, they were cited before Levi March, Esq., Stipendiary Magistrate at Bay of Islands, to answer a charge preferred against them by Joseph O'Reilly, as Commissioner of the Government of Newfoundland, charged with the enforcement of Chapter 129 of the Consolidated Statutes of Newfoundland (second series), commonly known as "The Bait Act."

The charge preferred against them was that on Monday, the 12th day of November, at Wood's Island, they had unlawfully put on board the Gloucester schooner *Ralph L. Hall*, a quantity of bait fishes, to wit, one barrel of herring, without a licence for that purpose, contrary to the provisions of Chapter 129 of the Consolidated Statutes of Newfoundland (second series).

After hearing before Magistrate March the men were convicted, and were punished by a fine of \$500 each, or three months' imprisonment.

I had the honour to represent the men at the hearing, and I gave notice of an appeal to the Supreme Court of Newfoundland.

This necessitated the finding of bonds, which were obtained after some little difficulty.

The appeal is now pending, and without prejudice to any legal rights which the said appellants may have in the premises, they humbly direct this statement of their case to the consideration of Your Excellency and of the Imperial authorities.

The men have acted in good faith and upon the representation of the Imperial authorities. Their fishery has been interfered with. They have been put to considerable expense. They have been sentenced to rigorous punishment, which may or may not be enforced by the decision of the Supreme Court.

They are both honest, industrious young men. One is married and is the sole support of a wife and little child, and has, I understand, increasing burdens coming upon him. The other has an aged mother, who looks to him for maintenance, and altogether both are deserving of that consideration which humanity and natural justice dictate.

May I respectfully beg that their case be taken under advisement.

On behalf also of those who have entered into bonds for them, viz: James H. Baggs and Maurice E. Boland, Esquires, may I ask that any action taken in the matter include the release of these gentlemen from the bonds they have executed in the matter.

I have, &c.,

WILLIAM R. HOWLEY,
*Solicitor for George Crane and Alex. Dubois,
and for Jas. H. Baggs and M. E. Boland.*

His Excellency Sir WM. MACGREGOR, M. D., K. C. M. G., C. B.,
Governor of Newfoundland, &c., &c.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's, December 10, 1906.*

(Received December 24, 1906.)

MY LORD: I have the honour to enclose herewith copy of a letter I have received from Captain Anstruther of H. M. S. *Brilliant*, having reference to fishing by night, and on Sunday, in Bay of Islands; and reporting the good work done by the U. S. S. *Potomac* in helping fishermen to recover their nets which were endangered by an unexpected severe frost.

I have communicated a copy of Captain Anstruther's letter to my Ministers.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

Brilliant, AT BIRCHY COVE, December 4, 1906.

YOUR EXCELLENCY: I have the honour to inform Your Excellency that on 28th November I received a letter, signed by three fishermen, saying that Sunday fishing and night fishing were being carried on and asking me if I had any power to stop the practices. The letter did not specify by whom the fishing had been prosecuted, but I gathered that it was being done by Americans. I immediately communicated with Mr. Alexander and protested against Sunday fishing by American fishermen (if such were the fact) as being contrary to the letter and the spirit of the *Modus Vivendi*, and likely to lead to disorder. Mr. Alexander told me that he had heard that as soon as the *Potomac* quitted the fishing grounds Sunday fishing had been carried on and that he suspected the crew of one particular schooner, but though he had watched the grounds every Sunday this season, he had not seen any person fishing. He assured me also that he had warned all the American fishermen against the practice, and that they all knew it was contrary to the *Modus Vivendi*, a breach of which would involve the honour of the Gloucester Board of Trade, who had given a pledge to the United States Government that the practice should be foregone.

Shortly afterwards I proceeded in the *Brilliant* to Middle Arm to make inquiries and to watch the grounds.

No fishing went on on the Sunday—2nd December—but the men were nearly all engaged salving their nets and gear, owing to the

sharp and sudden frost which had frozen over upper parts of the Goose and Penguin Arms, an occurrence which, I am told, is unprecedented at this period of the season.

The ice was from 4 to 6 inches thick and the fishermen were powerless to recover their property. The *Potomac* spent all Saturday and Sunday ice-breaking, which enabled many of the nets to be recovered, but I fear a large number will be lost. This work, though, of course, beneficial to American fishermen, was also of material assistance to Newfoundland, so I took upon myself to thank Lieutenant Hinds on behalf of the Newfoundland fishermen for his co-operation.

As regards night fishing, I told the men that that was not forbidden, but only in abeyance by mutual consent; nevertheless I should do all in my power to discourage the practice as tending to cause trouble amongst fishermen generally.

I have, &c.,

R. H. ANSTRUTHER,

Senior Naval Officer, Newfoundland Fisheries.

His Excellency Sir WM. MACGREGOR, K. C. M. G., C. B., &c.,
Governor of Newfoundland.

Governor MacGregor to Lord Elgin.

[Telegram.]

(Received 11.45 p. m., December 29, 1906.)

I have to-day obtained information as follows:

(1) *Potomac* sailed for United States America, 27th December; Alexander remains at Bay of Islands.

(2) Vessels at herring fishery 27th December, 41 American ships, 9 Canadian ships, besides Newfoundland vessels.

(3) Cleared by Custom House, Bay of Islands, up to 27th December, 58,923 barrels of herring.

(4) Shipped beyond three-miles 635 men; engagement at St. Pierre, 23; at Sydney, 77.

(5) Should the weather continue favourable, prospects of herring fishery good, may be continued up to 15th January.

(6) Relations of fishermen on friendly terms.

(7) There was considerable cutting of fishing nets and gear, principally American ships, against each other, but Newfoundland fishermen have suffered from this.

(8) *Potomac* did good service Newfoundland fishermen during the ice blockade about the middle of this month in releasing fishing nets and fishing smacks when blocked by ice; *Potomac* broke the ice for fishermen without distinction (of) nationality.

(9) No more cases have been brought before Courts of Law against Newfoundland fishermen.

MACGREGOR.

Lord Elgin to Governor MacGregor.

DOWNING STREET, December 29, 1906.

SIR: I have the honour to acknowledge the receipt of your despatch of the 10th instant, forwarding copy of a letter from the Officer

Commanding His Majesty's ship *Brilliant*, dated the 4th instant, reporting on the fishery in the Bay of Islands.

2. As regards the Sunday fishing by Americans, mentioned by Captain Anstruther, I have to state that at the beginning of this month the United States Ambassador informed the Secretary of State for Foreign Affairs that the United States Agent in Newfoundland had reported that one of the American vessels had been engaged in Sunday fishing, that an immediate investigation of the facts had been ordered, and that in the meantime the strictest injunctions against such fishing had been repeated in the proper quarter.

I have, &c.,

ELGIN.

Admiralty to Colonial Office.

ADMIRALTY, January 1, 1907.

(Received January 5, 1907.)

SIR: I am commanded by my Lords Commissioners of the Admiralty to transmit herewith, for the information of the Secretary of State for the Colonies, copy of letters, Nos. 87, 88, and 89, dated 13th ultimo, with enclosures, which have been received from the Senior Naval Officer, Newfoundland, relative to the winter herring fishery in Bay of Islands.

I am, &c.,

EVAN MACGREGOR.

[Inclosure No. 1.]

No. 87/346.]

Brilliant, AT BIRCHY COVE, December 10, 1906.

SIR: I have the honour to submit the following report on the winter herring fishery in the Bay of Islands for the season 1906.

2. Herring struck in on 14th October.

3. H. M. S. *Brilliant* arrived and anchored in Birchy Cove on 19th October.

I found there the United States fishery vessel *Potomac*, flying the pennant of Lieutenant Hinds, U. S. N., also the Newfoundland revenue cruiser *Fiona*, with Inspector O'Reilly on board.

On the way through the bay, and up the Humber Arm, I had counted 50 schooners, 9 of which, as I shortly afterwards learned from Mr. Alexander, the American Fishery Commissioner on board the *Potomac*, were American.

4. I very quickly got into communication with Mr. Levi March, Stipendiary Magistrate, who put all the information he could in my possession. The position was, that since the signing of the *Modus Vivendi* by the Governments of Great Britain and the United States of America purse-seines had become legitimate instruments for taking herring on the part of American fishermen, whereas they were forbidden to Newfoundland fishermen by the Rules and Regulations respecting the Fisheries of Newfoundland. It was this state of affairs which rendered the attitude of the fishermen of the two nations towards each other somewhat strained, and trouble was expected by the local authorities.

I took immediate steps to ascertain the disposition of the Newfoundland fishermen by inviting the most influential of them to meet

me in my cabin and discuss matters freely. I also found out exactly the standpoint which the Canadian fishermen took up. They one and all agreed that they wished to see purse-seining stopped, as it was likely to ruin the Bay of Islands herring fishery altogether.

After one or two interviews with Mr. Alexander, we arrived at a working arrangement which was not to be binding on the fishermen by regulation or rule but solely by mutual agreement, for the sake of peace and goodwill and the successful prosecution of the fishery.

5. In the meantime, those American schooners which had not brought full fishing-crews from Gloucester proceeded to ship local fishermen outside the three-mile limit, in accordance with the terms of the *Modus Vivendi*, which provided that such shipment should not be made the basis of interference or be penalized; and fishermen began to be very busy following the herring from Arm to Arm, though the fish were not as yet very plentiful.

6. On 2nd November a Public Notice, signed by the Minister of Marine and Fisheries, was promulgated, which quoted Sections 1 and 9 of the Bait Act of 1889. This caused considerable perplexity amongst the fishermen of both nations, as those sections of the Act seemed to prohibit what the *Modus Vivendi* allowed. Nevertheless, Newfoundland fishermen continued to ship on board American schooners, with the result that two men, who had shipped outside the three-mile limit on board the schooner *Ralph H. Hall*, of Gloucester, were arrested and tried before the local magistrate for violation of the Bait Act of 1889. They were fined \$500, and appealed against the sentence.

It would appear that it was in this manner that the Newfoundland Government intended to test the validity of the *Modus Vivendi* itself, as the presumption was that the case would go on to the Supreme Court and thence to the Privy Council for decision. This was to be a test case, and it was understood that arrest of all the men who had done the same thing was not in contemplation.

7. After this episode, which had caused a certain amount of consternation and excitement, the fishing proceeded very briskly and satisfactorily for the breadwinners until I left the bay on 11th December, with the exception of some loss of nets occasioned by the unexpectedly early freezing over of the Penguin and Goose Arms, and a case of theft of nets by the men of the American schooner *Colonia*, which was dealt with by the Stipendiary Magistrate.

8. As regards the prosecution of the fishery itself, it is a remarkable thing that herring do not seem to have been fished for, in the Bay of Islands, until the fifties of last century.

The Bay of Islands herring undoubtedly come through the Straits of Belle Isle and arrive in the bay in October, staying there till the following June or July, when they spawn and quit the bay; it is not known for certain where they go to during the summer, presumably to the northward. I think there is no doubt that they have no connection whatever with the Bay St. George herring.

On arrival in October they cruise about the bay for a bit and finally settle in the arms. This year there have been herring in all three arms, but Middle Arm seems to be preferred first, then North Arm, lastly Humber Arm; though this last arm was formerly the favourite. The bay itself has an area of 80 square miles, and the three arms are $8\frac{1}{2}$, 12, and 13 miles deep respectively.

9. It is only at the cruising period that purse-seines can be used with effect. A description of the method of using these seines is attached.

10. Gill-nets can also be used at this period, but the herring have to be followed about, which entails immense labour, weighing nets and moorings in deep water, besides covering the long distances from arm to arm.

It is in the art of setting these nets that the Newfoundlanders excel; if the nets are not set skilfully they are useless. They are set in fleets of two nets, each net varying from 16 to 22 fathoms in length and from 8 to 10 fathoms in depth, the head ropes being sunk at a depth below the surface of as much as 50 fathoms (in day time) and the moorings being in 80 to 100 fathoms or more. At night time, when the herring swim high, the nets may be only 2 fathoms below the surface. These nets cost about \$30 in the States, tarred and fitted, in addition to which price the Newfoundland fisherman has to pay 20 per cent. duty and the carriage, which probably brings their cost nearer \$40 to him. All Newfoundland herring fishermen seem to get their nets from the States, in spite of the duty, as they are of such excellent quality.

11. There are three ways in which a man may earn money at this fishery. He may work for himself, selling his catch to local British buyers (the more prosperous men using their own schooners, their own boats, and barrelling their own herring); or he may hire himself to an American schooner; or he may hire himself to a British (*i. e.*, Canadian or Newfoundland) schooner.

Under the first method a man may make \$100 dollars in the season (October, November, December, and the first few days of January) by selling to the Atlantic Fish Company, a Canadian concern, or to the *Harlaw*, a steamer owned in Canada; or to the two local traders who own or charter a schooner or schooners respectively and export to the Gloucester market.

Under the second method he may make as much as \$200, although naturally under a system of paying so much (\$1.25 is the minimum) per barrel actually put on board, some men make more than others, either by working harder or by having more skill or more luck.

Using the third method the earnings are probably less than under the second, as it is mostly the ablest men who ship with the Americans.

It is a marvel to me how the men do the work at all in the sort of weather one gets on the west coast of Newfoundland in the winter; blow high or blow low, it makes no difference to them, in hail, sleet, frost, or snow they fish steadily on as if they were not made of flesh and blood. Ice does not daunt them, if they cannot break it up they make holes in it and shove their nets down through and fish that way. Truly they are hardy folk, and deserve every cent they get. I have seen fishing in Iceland, fishing in the North Sea, and in many other parts of the world, but if I had a grudge against a man I should send him to fish for herring in the Bay of Islands about Handsel-Monday.

12. The weather this season was rather milder and slightly less boisterous than usual up to the end of November, though the freezing over of the upper portions of the Goose and Penguin Arms so early

as the 1st December was an unusual occurrence. After that, frost, snow, and gales of wind were of constant recurrence, and the weather became intensely inclement and rough, which made the hauling of nets a very arduous and bitterly cold process.

13. In the early part of the season, when the herring are caught they are measured in tubs (two to a barrel) and stowed in bulk in salt, on board the schooners, and reckoned in barrels (about 400 herring to a barrel); some few being actually barrelled when they are to be carried as upper-deck cargo. Later on in the season they are frozen on stages ashore or on board and stowed in bulk. Frozen herring are considered a great delicacy in the States, and about \$2.50 per barrel is paid to the men for them, whilst as much as \$6 is obtained for them in the Gloucester market.

As soon as a schooner is loaded she trips her anchor and makes sail for Gloucester. It has to be very bad weather to stop her. They usually do the distance from port to port (800 miles) in about 5 or 6 days. The record passage is 52 hours, they say.

The first schooner to sail this year was the *B. G. Anderson* (a Lunenburg schooner chartered locally). She sailed on 1st November and was ready to take in a cargo of frozen herring by 7th December. On the passage across her upper-deck cargo was washed overboard.

The larger schooners, especially the Lunenburgers, are beautiful craft of about 100 tons, carrying a working crew of six men. It is magnificent to see how their skippers handle them, and how extraordinarily well suited their rig is for the work they have to do. One would have thought that with such a large mainsail and so few hands they would be very awkward to handle before the wind in dirty weather, but it does not seem so.

14. The number of American schooners fitted out for the fishery this year was 61 (names appended) of which 4 were fitted with auxiliary gasoline engines, a short description of which is attached. These engines are undoubtedly very useful, and a comparison in the matter of expense and suitability between them and the auxiliary twin turbines fitted in some of the Scotch luggers would be of interest. Several American schooners are supplied with gasoline launches, which are a great boon to them in carrying provisions, mails, &c., when nets are set 20 miles or more from Birchy Cove (the headquarters).

15. The number of Newfoundland and Canadian schooners was about 50; at least one was fitted with auxiliary screw and motor engine, but it is hard to say how many there really are, as there is nothing to betray their presence unless one happens to see them under way in a calm. I do not know that any of them carried gasoline launches, but they would, of course, be as useful to them as to the Americans if they could afford them.

16. The season up to 11th December may be said to have been well up to the average. By that date 26 schooners had sailed with full fares, varying from 1,400 to 2,200 barrels, and there were very good prospects for the remaining part of the season, provided the weather were favourable.

17. Two American schooners were wrecked during the early part of the season. One was burnt in the early part of December. One Lunenburg schooner was wrecked about the same time.

18. In conclusion, I have great pleasure in saying that during the whole period I have not had, in my official transactions, the slightest difficulty or misunderstanding, and I do not wish to have better or more courteous colleagues than Mr. March, Mr. Alexander, and Inspector O'Reilly.

I have, &c.,

ROBERT ANSTRUTHER,
Senior Naval Officer, Newfoundland Fisheries.

The SECRETARY OF THE ADMIRALTY.

[Inclosure 2.]

NOTES ON THE NEWFOUNDLAND WINTER HERRING FISHERY.

No. 88/346.] *Brilliant, AT BIRCHY COVE, December 10, 1906.*

In considering the question of this fishery, it appears to me that there are six distinct standpoints from which it can be viewed:

- 1st. That of the Newfoundland fishermen.
- 2nd. That of the American fishermen.
- 3rd. That of the Canadian fishermen and fish merchants.
- 4th. That of the Newfoundland Government.
- 5th. That of the United States Government.
- 6th. That of the British Government.

Taking the first three together, I find that the Newfoundland men were quite satisfied with the system which obtained till the beginning of last year, under which they caught herring with their own appliances, and sold them to whomsoever they chose. Since they have been forbidden to sell them to Americans, some of them sell to Canadians, or to local buyers, as they may have done before, whilst others, determined to work for their old comrades—the Americans—shipped on board American schooners in spite of all obstacles, and followed their calling in, virtually, the same manner as they had always been accustomed to; their contention being, in the first place, that the Canadians and others could not take all the herring, and that, therefore, this was the only means left to them of making a living; in the second place, that they had always been in the habit of working with Americans, and that they did not see why they should not continue to do so, if they wished to.

There are about 1,200 fishermen belonging to Bay of Islands and Bonne Bay, besides a few who come from neighbouring places on the West Coast, and from other parts of the Island to engage in this lucrative industry. About half these men prefer to work with, or for, Americans, one reason being that whereas, formerly, herring fishers worked under a system of barter (as cod fishers do to this day), the Americans were the first to inaugurate a system of payment cash down, which compelled everyone else who wished to compete to follow suit. This influx of ready money engendered a sense of freedom and a spirit of independence amongst the herring fishers such as can never be felt by men working under a truck system. The men are grateful for this emancipation from former conditions, they are loth to lose the benefits they have gained, and they would risk anything to avoid a return to the old régime.

Another reason is that the Americans are very free-handed in their dealings with the men, and sometimes spontaneously raise the price to be given per barrel without any demand from the men at all, thus keeping up a wholesome spirit of competition against each other, and against rival buyers, which is all to the pecuniary advantage of the local fishermen.

Finally, the Americans are credited with feeding their men better. These are all reasons which have been given me by fishermen themselves.

Now, looking at it particularly from the point of view of the American fishermen.

As matters stand he has Treaty Rights over which disputes frequently arise, causing him trouble and anxiety about the success of his voyage.

In fitting out for the winter season he has three alternatives: he may (1) ship a full American crew in Gloucester; (2) ship a Newfoundland fishing crew on the mainland; (3) ship Newfoundlanders outside the three-mile limit.

If he ships an American fishing crew in Gloucester, and fishes without any Newfoundland men, he may get along all right, but the cost is very heavy, and the men are not so expert in the use of gill nets as the Newfoundlanders.

If he ships Newfoundland men in Gloucester or Sydney, the cost of getting them there has to be considered as well as the difficulty of the transport of the necessary boats, &c., in addition to the other incidental expenses.

If he ships Newfoundlanders outside the three-mile limit, to avoid this expense and difficulty, he causes annoyance to the Colonial Government, and a great deal of trouble to himself.

One would think that he would, on the whole, prefer to buy herring direct from the Newfoundland men, as he used to do, and as he would be able to do again under the Bond-Hay Convention, because it probably costs him more to obtain the herring by hired labour than it would to buy them.

For example, an outfit of nets costs quite \$1,200; besides this he has to keep and pay from 30 to 40 men at a minimum rate per barrel of \$1.25; so that for a full fare of 2,000 barrels he has to disperse a good round sum, roughly \$2,500. Now, supposing he gets \$4.25 per barrel (a normal price) from the smoker at Gloucester, *i. e.*, \$8,500 for the cargo, he ought to make it pay well, but it would pay him just as well, and better, if he bought his herring direct from Newfoundlanders, because he would, at any rate, save himself the value of the nets.

Consequently, a settlement on the lines of the Bond-Hay Convention would seem to me to be to the advantage of the American fishermen.

As to the Newfoundland fisherman, he would welcome any settlement which would enable him to earn his livelihood in peace and quietness, without the risk of going outside the three-mile limit in a frail dory, or the fear of being punished for law breaking if he adopts the method of making his living which he thinks to be the most advantageous.

In addition to this there is the Canadian standpoint,

Canadians do not fish for themselves, but buy herring and export them to Halifax and other Nova Scotian ports. Some Canadian schooners work independently, some work for the Atlantic Fish Company. This Company has built an establishment at Benoit's Cove, Bay of Islands, to which they hope gradually to attract the main portion, if not the whole, of the herring export trade from Bay of Islands, and eventually to cure and smoke their herring themselves, so as to export all over the world and rival Gloucester as a fish market.

So, it is obvious, that Canadians have a distinct interest in the ultimate preservation of this fishery.

Beyond these Canadians and the Americans, there is, as far as I know, no other means by which a Bay of Islands fisherman can dispose of his herring except to one or two local traders, who export to Gloucester, and to a coasting steamer which calls fortnightly and collects barrels of herring which she takes to Halifax.

Hence, there is, to my mind, as much to be said for the attitude of those Newfoundlanders who insist upon working for Americans as for those who do not, yet no apparent reason why the American fishermen themselves should object to the Bond-Hay Convention.

I found that the conditions of that Convention were very vaguely known either to Newfoundlanders or to Americans, so I sent copies of it to several Newfoundland fishermen of my acquaintance, some of whom were working on board American schooners, thinking that, as it appears to offer a solution advantageous to both, friendly discussion of its terms could do no harm.

There remain the 4th, 5th, and 6th points of view, about which it would be presumption on my part to say much, but I venture to hazard the opinion that it would seem that if the Bond-Hay Convention were to come into force, there would probably be no further trouble. Whether it has got a better chance of getting through the Senate now than it had two or three years ago is hard to say, but I think the Gloucester men recognise that it is of the utmost importance to them to get the herring, and that it pays best to buy them direct. I believe that their chief objection to that Convention is the fear that, under it, Canadians might succeed in getting their fish into the American market under the cloak of Newfoundland, and that, as Canadians pay lower wages to their crews, and build their schooners more cheaply, the Gloucester men would not be able to compete against them. Article 3 of the Convention ought to be a sufficient safeguard against such a thing.

Failing the Bond-Hay Convention, some other solution of the question will, no doubt, be found; but whatever it may be, I confess to feeling that it would be preferable if Newfoundland men were allowed to ship from the mainland, rather than just outside the Bay, as the practice is galling to the local authorities, and very dangerous to the fishermen in bad weather.

If American skippers could thus be sure of getting Newfoundland fishing crews there would no longer, I imagine, be any question of using purse seines, which are very expensive, and not very much use, except just when the herring are cruising in the Bay preparatory to settling into one of the Arms. In this way the most serious danger of disturbance amongst the fishermen would be removed,

and the damaging effect of those engines on the fishery as a whole would be got rid of.

ROBERT H. ANSTRUTHER,
*Captain and Senior Naval Officer,
Newfoundland Fisheries.*

[Inclosure 3.]

No. 89/346.]

Brilliant, AT ST. JOHN'S,
December 13, 1906.

SIR: In continuation of my letter, No. 83/346, of 3rd December, 1906, I have the honour to report that since that date everything has been most quiet, and nothing has interfered with the fishery, except the weather; and beyond a case of theft of nets by men working on board the American schooner *Colonia*, with which the Stipendiary Magistrate dealt, there have been no complaints.

2. On 6th December the *Potomac* sailed for coal, she having expended an unexpected amount ice breaking in the Goose and Penguin Arms.

3. During the middle watch of 9th-10th December, ice began to form all round this ship, so in accordance with my instructions I weighed the next forenoon, and proceeded out of the Humber Arm, anchoring in York Harbour to adjust the low pressure crosshead, and for the weather to moderate. I left the Bay the following morning at daylight, and arrived at St. John's at 7.30 a. m., on 13th December.

I have, &c.,

R. H. ANSTRUTHER,
Senior Naval Officer, Newfoundland Fisheries.

THE SECRETARY OF THE ADMIRALTY.

Admiralty to Colonial Office.

ADMIRALTY, January 28, 1907.

(Received January 30, 1907.)

SIR: I am commanded by my Lords Commissioners of the Admiralty to transmit herewith, for the information of the Earl of Elgin, copy of a letter, dated 9th January, 1907, which has been received from the Senior Naval Officer Newfoundland Fisheries, relative to proceedings since leaving Bay of Islands for St. John's. A copy has also been forwarded to the Foreign Office.

I am, &c.,

EVAN MACGREGOR.

[Inclosure.]

Brilliant, AT ST. JOHN'S,
January 9, 1907.

SIR: I have the honour to report that in compliance with my orders I left Bay of Islands as soon as the ice formed, and proceeded to St. John's, arriving there on the 14th December. Having completed with coal, and taken on board certain surplus stores from H.M.S. *Calypso* for conveyance to Bermuda, I awaited orders in accordance with Admiralty telegram No. 18 received on the 14th December.

2. From information received from Bay of Islands it would appear that the Humber Arm was frozen over by 14th December to as far as eight miles below Birchy Cove and that accidents had happened to some of the small steamers which got caught in it.

3. In consequence of Admiralty telegram, No. 20, received on 27th December, I despatched a Lieutenant by rail to Birchy Cove to obtain the necessary information on the spot, as I considered that a cheaper, quicker, and more certain way than taking the ship round, and it avoided any possibility of the ship being caught in the ice in case of one of the sudden changes in the weather so common on these coasts.

4. After the first frost a thaw set in about Christmas time, which lasted into the new year, and the Humber Arm became once more free of ice.

5. The weather continued very changeable until the 7th January, when Lieutenant Carter returned from Bay of Islands, and made a report, the substance of which is contained in the attached document.

I have, &c.,

ROBT. H. ANSTRUTHER,
Senior Naval Officer, Newfoundland Fisheries.

The SECRETARY OF THE ADMIRALTY.

SUPPLEMENT TO MY REPORT ON THE WINTER HERRING FISHERY IN THE
BAY OF ISLANDS, 1906-1907.

After the *Brilliant* left on 11th December, the weather at Bay of Islands was variable, thaw following on the first severe frost, and, the frozen herring industry thus being much delayed, matters at one time wore a gloomy aspect, but notwithstanding doleful prognostications, the catch to 1st January was in excess of that in 1905, and there were on the scaffolds as many herring as the schooners could deal with. The general opinion seemed to be that there has never been a better season.

2. Twenty-seven American vessels have sailed from Bay of Islands, taking a total of about 40,000 barrels. Fifteen others are nearly loaded, and may be expected to leave before 10th January. Three are making their second trip.

About twenty vessels, Canadian-owned, and six locally-chartered schooners have sailed with full fares.

3. The *Potomac*, during the severe frosts, did very good work in breaking the ice in the Arms, and in freeing schooners and nets. She left for Bonne Bay to coal on 20th December. On 27th December she left Bay of Islands, leaving Mr. Alexander at Birchy Cove.

4. The Atlantic Fish Company insist that Canadians can take all the herring which can be supplied to them by the fishermen in the Bay of Islands, and that wages will be as high as at present. Up to 1st January this Company had cleared five vessels, or about 6,800 barrels.

5. The total number of American schooners engaged in the fishery has risen to 65. Two more have been burnt.

6. The total number of Newfoundlanders shipped outside the three-mile limit was 635; about 250 more were shipped at Sydney and other ports.

7. The want of hospital accommodation at Bay of Islands was very much felt, one case having had to be sent to Battle, on the Labrador Coast.

I have, &c.,

ROBT. H. ANSTRUTHER,
Senior Naval Officer, Newfoundland Fisheries.

The SECRETARY OF THE ADMIRALTY.

The Daily News, St. John's, Newfoundland, February 15, 1907.

* * * * *

BOND *versus* ANSTRUTHER—STATEMENT OF FACT.

In his speech on Tuesday, Sir Robert Bond commented severely upon the conduct of the senior naval officer on this station, whose duty occasioned Captain Anstruther's presence at Bay of Islands last fall during the herring fishery. The News holds no retainer for the defence of Captain Anstruther, but fair play suggests answer to the Premier's reference to that official.

Sir Robert Bond stated that on the day after his arrival at Bay of Islands (October 20th), Captain Anstruther convened a meeting of fishermen on board his ship, and there discussed the fishery trouble. That next day, Captain Anstruther visited Canadian vessels and also the American tug *Potomac*, on which latter, with Commissioner Alexander, he attempted to make a new arrangement independent altogether of those then in existence, and thereby offered insult to His Excellency the Governor, who as such, was the superior officer. The Premier's statement is quite at variance with the facts. Captain Anstruther did not convene a meeting on his ship as stated, though it is true that he discussed the purse-seine difficulty with Bay of Islands fishermen, who, of their own volition had gone to him for assistance. It will be remembered that some Americans had used purse-seines. It will further be remembered that a number of local fishermen had by petition, humbly asked these Americans to abstain from using purse-seines. The men who waited upon Captain Anstruther asked his interference, towards stopping the use of seines, and were promptly told that under the *Modus Vivendi* he could exercise no authority. He did agree at the earnest request of these fishermen to use his influence to stay the existing evil, and in conjunction with Mr. Alexander was successful in accomplishing much in this behalf. That purse seining was stopped is due largely to these two representatives of Britain and America, respectively, and the other fact that American fishermen evinced commendable anxiety to defer to local wishes so far as it was possible. As a matter of fact, no agreement of a binding or official nature was ever made, but merely an informal understanding between all parties to abstain from what was claimed to be injurious and offensive.

As to insulting the Governor this is mere twaddle. H.M.S. *Brilliant* and her captain were not sent to Bay of Islands to interfere

with the Governor or his ministers, or the people of the Colony, but to protect the treaty to which England was a contracting party. The presence of both on the scene is ample proof of this, a fact apparent to every man. It is true that the *Brilliant*, in guarding the treaty, was the means, incidentally, of enabling many Newfoundland fishermen to earn their bread, which would otherwise have been prevented by their own local Government, but the fact remains that the British captain did not in any way exceed his authority, or attempt more than the work for which he was commissioned. At all times Captain Anstruther counselled observance of law on the part of Newfoundlanders, and the avoidance of any act calculated to engender strife or trouble.

The Premier, during his speech quoted with much warmth an idiom of President Roosevelt who declared himself in favour of "the square thing all round." It is along these lines that the foregoing has been suggested, for it is manifestly dishonest and unfair to Captain Anstruther, especially in his absence, to credit him with conduct that would be reprehensible if he were guilty, but of which he is certainly innocent. Let us have "the square thing all round" in this *Modus Vivendi* business. A cause that must be bolstered up by misrepresentation and untruth is inherently weak.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, ST. JOHN'S, *February 25, 1907.*

(Received March 9, 1907.)

MY LORD: I have the honour to enclose, for your information, a leading article from *The Western Star*, a paper published at Bay of Islands, in which the *Modus Vivendi* is discussed. As this paper must be chiefly dependent on the patronage of the fishermen of that district, the article in question may be presumed to express their general views on the subject.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

[*The Western Star*, Bay of Islands, February 20, 1907.]

MODUS VIVENDI—SAVED THE SITUATION.

On Tuesday, 12th instant, Premier Bond, in an exhaustive speech of nearly five hours, moved the adoption, by the Legislature, of an address to the Imperial Government respecting the *Modus Vivendi*. In his speech, the Premier attempted to throw dust in the eyes of the people so as to divert their attention from his vindictive "jail or starvation" policy, to the action of the British Government in arranging a *modus vivendi* over the heads of the Colonial Government, whereby our fishermen were enabled to earn a livelihood. In criticising the Premier's speech, Captain C. Dawe, leader of the Opposition, and Mr. Morison spoke at length. An open market sounds well, Captain Dawe said. It looks all right to talk of a market of 80,000,000 American people, but it should not be forgotten that these people don't want our codfish, they catch nearly all they require

themselves, and with increased bait privileges, under the proposed Bond-Hay treaty, they would not only supply their own market, but would compete with our fish in foreign markets, and by so doing, reduce the value of our fish in those markets. Americans certainly possess treaty rights. If they were denied the right to purchase they would simply make arrangements to catch themselves, so that our people would lose the chance of selling profitably. Under the Washington Treaty, the Americans came to our coast, and sold all their small fish and oil, from the proceeds of which they purchased bait. They require very large fish for their markets, and so this plan suited admirably. The Americans are reported to have recently invaded the Labrador, which was a new development calculated to work serious injury to our own people. Petitions respecting this feature would likely be presented during the present session. He believed the Foreign Fishing Act was responsible for driving the Americans to the Labrador, to the injury of Newfoundland. He intimated that he would vote against the proposed Address, which appeared to him to be a censure of the British Government that was not deserved. He believed the British Government was anxious to conserve the interests of this Colony, but were met with treaty rights which had also to be reckoned with, and Britain would not act dishonestly towards any nation, or violate her treaty obligations.

Mr. Morison contributed an interesting speech to the debate. He differed from the Premier as to the only opportunity of publishing the Government position, saying that if so important the people might have been appealed to by public meetings, for a test of opinion. The question had a more serious than the constitutional aspect, viz., the policy of the Government. A careful review of the Premier's speech was made, and points of difference dealt with. He reviewed the difficulties with Canadian and American fishermen, extending over a number of years, and which led up to the Bond-Blaine-Hay treaties. It was possible a majority of merchants favoured these treaties, but that did not mean the fishermen, whose opinion was important. The merchants had urged an export duty on American, and a bounty to our people, and if the Government had made some such proposition, it would have aided in solving a question now vexatious. There could be no doubt that the Fishing Acts were the cause of the present trouble. He regarded the testimony of Inspector O'Reilly and Magistrate March as being unreliable. One was engaged in detecting violations of the fishery laws, the other tried and punished offenders, as in the case of Crane and Dubois. A visit to Bay of Islands would prove the Premier's statements untrue. He disputed the idea that the Premier came into power with a mandate from the people *re* this fishery dispute, and characterized as harmless the reference to it in the last manifesto. The references of the Premier to H.M.S. *Brilliant* were unfair, and he did not think the Governor worried over Captain Anstruther's action, but was quite well able to look after himself. The fishery had ended well for all save those arrested and punished, and it had only ended favourably in so far as the British Government had stepped in to protect local men against unjust local enactments.

He intended to vote against the address. If it were simply a protest against any invasion by the Imperial Government of our rights as a self-governing Colony he and every other member on his side of

the House would be found standing shoulder to shoulder with the Premier and his colleagues. They had hoped that the Address would have taken this form, but the Premier has willed it otherwise. Whilst he regretted the necessity for the *Modus Vivendi*, he did not see what other course was open to the Imperial Government but to maintain as far as possible the *status quo ante* for the fishery season which was then about to commence. The wisdom of the Imperial Government's action has been shown by the result. The fishery had been carried on as profitably as usual, and our fishermen on the West Coast have been enabled to earn a fair season's wages, which is all they expect from the herring fishery under the most favourable circumstances.

No invasion of the position guaranteed to us by the famous Labouchere despatch of 1857 has taken place. The two cases are not parallel. In 1857 the Imperial Government had entered into and practically concluded an arrangement with France without the knowledge of Newfoundland, under which valuable and important portions of Newfoundland territory were proposed to be ceded to France. No wonder the men of that day rose in arms when the tardy news of this sacrifice of their rights was brought to them, and if the *Modus Vivendi* which they were then considering had any such operation, the patriotic heart of every man worthy of the name in Newfoundland, without regard to class, creed, or political distinction, would beat in unison. There would be no need to let the question fizzle in the newspapers for four months and then bring it on the floor of the House for an expression of opinion by a partizan Assembly. The people would have acted promptly and decisively, and long before this delegates of the people would have been knocking at the doors of Downing Street and demanding that square deal which the Right Honourable the Premier has talked about. This was not done, because the people are not behind the action of the Government in the course taken by them. They recognize that they are the principal sufferers from the unwise policy of the Government and its unwise legislation of 1905 and 1906.

His position with regard to this question was very clear and very simple. He was at one with the Government in their desire to uphold in all their integrity the constitutional rights of the people of the Colony, but he was wholly at variance with them with regard to their fishery policy on the West Coast. His conviction was that the herring that come to Bay of Islands every season come there primarily for the benefit of the people of Bay of Islands, and, in the next place, for the benefit of our fishermen as may see fit to go there to earn a dollar for themselves and their families. Anything that will increase the value of the herring for these people, who risk their health, and sometimes their lives, in catching them, anything that will improve the facilities for marketing these herring at better prices, he would support to the best of his ability. Feeling convinced that the Government's policy, if persisted in, will spell ruin for the people of the West Coast, he opposed it to the utmost of his power.

To our hard-working fishermen of the West Coast the question is of vital importance. It means their immediate source of livelihood. It means the difference between hard times and comparative prosperity. It means the possibility that some of them may have to go abroad for a living. He trusted, therefore, that wiser counsels may prevail, that future negotiations may be approached by our Government in a better spirit than is shown by their present attitude, and

that when they met there again next year they would have something more pleasant to contemplate than the possible starvation or imprisonment of our own fishermen.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, ST. JOHN'S, *February 26, 1907.*

(Received March 9, 1907.)

MY LORD: I have the honour to enclose, for your information, copy of a petition presented on the 13th February by Mr. M. P. Cashin to the House of Assembly, signed by about a thousand fishermen of the Ferryland District of the south coast of this island, praying that the Legislature may "terminate the present policy of hostility towards the American fishermen," &c.

2. I also enclose copy of a petition, presented by Mr. W. Oke on the 19th February, and signed by some 56 fishermen, praying that the use of trawls, bultows, and cod-nets be prohibited between Cape Lewis and Cape St. Francis on the coast of Labrador.

3. No action has so far been taken on these petitions.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

To the Honourable House of Assembly in Legislative Session Convened:

The petition of the following fishermen of Ferryland District:

Respectfully sheweth:

That your petitioners are engaged in the cod fishery on the southern shore, and until two years ago added to their earnings from that avocation by the sale of bait to American vessels.

That this bait business was one which enabled your petitioners to earn considerable money, and that the visits of these American vessels resulted in the circulation of considerably larger amounts to the sale of ice, stores, fishing outfits, shipping men, and proving a means of circulating at least \$40,000 per year to the people of this district.

That two years ago the Government decided upon excluding these American vessels from our waters, in the mistaken belief that by so doing they would injure the American fishermen, whereas they only succeeded in injuring the people of this country.

That not alone have the people of this district been injured directly by the suspending of this intercourse with the Americans, but that the people of the northern districts have been injured to an equal extent by the American fishing vessels which were excluded from this section of the coast, now invading the Labrador waters where our northern fishermen always previously carried on their fishery without interruption.

That during the two years this policy has been enforced 50 or 60 American vessels fishing on the Grand Banks and in Labrador waters, have brought home to Gloucester larger catches than they secured before.

That the only result of the Government's present policy has been to educate the Gloucester fishermen into seeing what little value the

privileges are which this Colony grants them, and how easily they can do without us.

That these American vessels have been securing large quantities of bait from freezers in Canadian ports, which are stocked with herring taken around Magdalene Islands and Nova Scotia coasts to use for their spring supply.

That the only result of the Government policy being to deprive our Newfoundland fishermen of this bait traffic and to turn it into the hands of the Canadians.

That as a result of the facilities granted them by Canada in her maritime provinces between 250 to 300 sail of American vessels visit provincial waters every year pay about three times as much in license fees as Newfoundland ever received, spend corresponding sums in the purchase of bait, ice, and supplies.

That this traffic has become so profitable to the people of these Nova Scotia ports that they are advocating the abolishing of the licence fees altogether, and allowing free entry to the American fishermen, without any restrictions, for the sake of the trade they bring.

That your petitioners believe that the best interests of the people of this district and the Colony in general would be served more by abandoning the present policy and returning to that enforced up to 1904. And that your petitioners, therefore, humbly pray that this Legislature in its wisdom will terminate the present policy of hostility towards the American fishermen, and return to that under which the people of this district and other districts of the Colony were able to earn food for their families by carrying on legitimate traffic with the Americans, instead of being, as they are now, obliged to emigrate to foreign lands to obtain a livelihood denied them at home.

And your petitioners as in duty bound will every pray.

(About 1,000 signatures.)

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, ST. JOHNS, *March 4, 1907.*

(Received March 25, 1907.)

MY LORD: I have the honour to enclose, for your information, an extract from The Evening Telegram of this city, of the issue of the 2nd instant, containing a remarkable letter from His Grace Archbishop Howley, in which that prelate seems to advise that Newfoundland should regard the 1818 Treaty between Great Britain and the United States as no longer binding; and that "England must be asked to relieve us of this burdensome Treaty as she did that of the French. Let her settle it as she may with America."

His Grace, it will be observed, seems to be under the impression that the Treaty expires by effluxion of time, for he says "Britain dare not renew the Treaty of 1818 without running the risk of the disruption of the Empire. The sooner Americans recognise and take heed of this great fact the better."

2. I need hardly say that such language from such a source in a community where every fourth man cannot read, is ill calculated to

facilitate the settlement of the questions now pending in this connection.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

[Extract from Evening Telegram, St. John's, Newfoundland, March 2, 1907.]

NO MORE MODUS VIVENDI.

Editor Evening Telegram:

MR. EDITOR: I have read the lengthy and lucid debate on the question of the *Modus Vivendi*. It is not to express any opinion on the debate that I now write. On that point I will merely say that in my humble judgment it is a splendid display of Parliamentary eloquence and argumentation, and I think it would do credit to any Colonial Parliament of the Empire.

My object now, however, is to broach a new idea. It may be thought that nothing is left to be said on the main question. Yet it seems to me there is something yet to be said.

Throughout the whole debate the assumption was accepted as an axiom or a postulate that there *is* to be a *Modus Vivendi*, or a Treaty between us and the United States. That the Americans *are* to have Treaty rights on our shore for all time to come.

Why should this be so? I maintain that it should *not* be so. That their Treaty rights must be ended as the French rights were.

Of what use was it for us to fight for two centuries in order to shake off the incubus of the French rights if we are to be encumbered for all time with the American rights?

We don't want to have an American shore no more than we did a French shore. We want a Newfoundland shore only in this island home of ours!

This may be thought wild and impracticable language. Why so? What is there more sacred and indissoluble about the Treaty of 1818 than about the Treaty of Versailles, 1783? The difference in their ages is not so great. Both smell of the musty past. Both are out of date. If the Treaty of Utrecht had become so obsolete by the lapse of time that the British Government had at last to wipe it off the slate, why should not the same doctrine apply to the American Treaty of 1818?

England must be asked to relieve us of this burdensome Treaty as she did that of the French. Let her settle it as she may with America. Let her give whatever compensation is deemed just, and then we ourselves will deal with the Americans. It is preposterous that we should be bound down by Treaties made a hundred years ago, and which do not suit present circumstances.

I read recently in a very influential and representative American newspaper, The New York Times, an article from which I extract the following sentiments:

"Americans, who strive to keep an open mind, and to deal with the question upon which they cannot help forming an opinion, *solely upon its merits*. * * * Of what avail to recite to such Americans the history of" (an ancient Treaty). "Every man, woman and child whose interests were affected by that instrument has long since

mouldered into dust; since the dispute began. * * * The terrible Mortmain, the weight of the dead hand was always to hang over the land. * * * Is that the kind of appeal" (to ancient Treaties) "that can be made with success to Americans? * * * Is it the kind of appeal that can be successfully addressed to a generation which has seen?" &c., &c., &c.

"To such a plea the Americans will make answer that in spite of all musty parchments and obsolete formularies, the earth belongs to the living and not to the dead, and that it is vain to plead the *wording of old compromises* against the lights of humanity of to-day." Bravo! Noble words; worthy of a great enlightened nation. We accept every one of them. Of course the minor circumstances that these high and noble sentiments were expressed, not against the Newfoundland fishermen, but the old and decrepit *fishermen of the Vatican*, does not affect the great national and patriotic principle above enunciated. The trifling difference that the Treaty alluded to in the above extract was not that of 1818, but one a little older, namely, 1801. The *Concordat* was a very solemn Treaty entered into between France and the Pope. It had all the elements of a great International Treaty; but why should such an antiquated document stand in the way of the great march of civilization of the twentieth century? Just so. Now to apply the principle to the Treaty of 1818, I maintain that it should be abolished, and with all respect, I submit that this is the demand our delegates should make at the next Colonial Conference. England should pay a reasonable compensation, as she did in the case of France. The Americans will not be in any worse position by allowing this degrading yoke to be lifted from our shoulders. On the contrary they will be better off. In the first place they will have the money payment to be made as compensation.

Secondly. Our local Government will be more cordially disposed towards them, and less inclined to enforce local laws in a vexatious way against them; and

Thirdly. It is impossible to conceive any outcome of negotiations, or future Treaty which will grant to the Americans any more favourable terms than we, the Government of Newfoundland, would be prepared to grant them, if not coerced with this badge of slavery—a Treaty imposed upon us by England.

The sentiment is growing fast throughout the Empire, that Britain must no longer impose Treaties on her unwilling Colonies, and she dare not renew the Treaty of 1818 without running the risk of the disruption of the Empire. The sooner Americans recognise and take heed of this great fact the better.

Newfoundland is in the near future about to become a most important link in the great chain of commerce and travel which will gird the globe. That portion of our shore now bound in the manacles of this *effete* Treaty plays a prominent part in this great scheme of civilization and progress. It must be *freed*. We must shake off the shackles of foreign domination. It must be no longer the American Treaty Shore. We want no outside nation to crush the heel of hard Treaty rights upon the fair face of the noble and most beautiful province of our country. In a word, there must in future be no place around our seagirt isle which we cannot, in all the fulness of right and dominion, call the Newfoundland shore.

I remain, etc.,

M. F. HOWLEY.

Governor MacGregor to Lord Elgin.

[Extract.]

GOVERNMENT HOUSE, *St. John's, April 2, 1907.*
(Received April 13, 1907.)

I have the honour to transmit, for your information, the text of a Resolution passed by a public meeting convened at Bay of Islands on the 26th ultimo, which has been forwarded to me signed by the chairman and secretary of the meeting.

As the resolution was not signed by the individual members present, it is, of course, not easy without further information to determine what part or proportion of the population of the Bay of Islands district may be in agreement with the views expressed in the Resolution and may be in accord with the request conveyed in the last paragraph, which prays "that His Majesty in Council will be pleased to take such action as will enable us to enjoy our fishery as we enjoyed same prior to the legislation of 1905 and 1906."

I have furnished my Ministers with a copy of the Resolution, and have invited them to offer for your consideration any comments thereon which they may desire to have placed before Your Lordship.

The Attorney-General has, on my request for information in regard to the circumstance and formation of this meeting, sent me a letter, copy enclosed, covering a communication, dated 27th March, which he has received from Mr. March, Stipendiary at Bay of Islands.

I enclose also a copy of a telegram addressed by Mr. March on the 30th ultimo to the Minister of Justice, from which it would appear that some four score men attended the meeting.

I enclose a cutting from the "Daily News" of St. John's, of this day's date, in which it is stated that there was only one dissentient voice at the meeting, and that the fishermen are hopeful that their memorial will result in a redress of their grievance. It has to be remembered that the "Daily News" is the organ of the Opposition.

I have, &c.,

WM. MACGREGOR.

P. S.—Since writing the above I have been informed that Ministers do not wish to offer any comments on the Resolutions. (W. McG.)

[Inclosure.]

["The Western Star," Bay of Islands, March 27, 1907.]

MONSTER MASS MEETING OF FISHERMEN AND CITIZENS.

A mass meeting of fishermen and citizens was held last evening in the Church of England Hall, when the subjoined resolution and address were unanimously adopted. The chair was occupied by Mr. Thos. Perrott, a worthy representative of the bone and sinew of the country. He explained the object of the meeting, and pointed out the great injustice that had been done the fishing interests of the country by the introduction of Sir Robert Bond's fishing policy. The secretary, Mr. J. A. Barrett, then addressed the meeting, and proposed the resolution and address, which Mr. J. H. Baggs ably seconded. Other speakers took the floor, and freely expressed them-

selves on the fishery question, and clearly showed their indignation over the action of the Bond Government in enforcing such stringent regulations on the fishermen. Here is the resolution, and also the address:

Whereas we, the people of Bay of Islands, view with alarm the policy of the Government of this Colony regarding our herring fishery; and

Whereas, in the interests of our families, we feel that it becomes necessary for us to protest against said policy, and to appeal to our Gracious Majesty the King for protection and preservation; be it therefore

Resolved, that the annexed address to His Excellency the Governor is a correct and true expression of our feelings on this matter; and that our chairman and secretary sign same on behalf of this meeting, and forward same, together with this resolution, to His Excellency, with a respectful request that he give the same his consideration:

To His Excellency Sir WILLIAM MACGREGOR, M. D., K. C. M. G.,
Governor of Newfoundland, &c., &c.

May it please Your Excellency, on behalf of the fishermen and residents of the West Coast, especially those of Bay of Islands, Your Excellency's consideration is respectfully craved to the following:

For many years past the principal support of the people of this bay has been obtained from the prosecution of the herring fishery in this neighbourhood, and from the industries incidental to said fishery.

About the latter part of October in each year, the herring usually strike in some one or more of the deep arms of Bay of Islands, and for the three months following, the residents of the bay, and many others from other parts of the Colony, are busily engaged in catching and curing the same.

In the past a ready market has been found for this catch by selling to American schooners, which have come down to the coast at this season, and purchased our herring for cash, and at rates satisfactory to our people.

Without this American market, the fishery would be of little or no benefit to us, as the demand for the fish in other directions, on the same or as good terms, is comparatively nothing.

In 1905 the Government of Newfoundland enacted, and enforced, a law which prohibited us from selling our catch to the Americans, and further prohibited us from shipping as fishing crews to American fishing schooners in Newfoundland ports. This Act forced us to go outside Newfoundland waters to ship as fishermen on United States vessels during the seasons of 1905 and 1906.

In some cases our fishermen went to parts of Nova Scotia, and there joined the American vessels. In other cases, by far the most numerous, our men proceeded in small fishing boats outside the waters of the Colony, and joined the American vessels on the high seas.

This latter course was fraught with great danger, the weather at this season is very tempestuous; the outer coasts of Bay of Islands consist of bleak cliffs; the fishing boats are frail and without decks. Fortunately no fatalities attended this mode of proceeding; but many a life was jeopardised during the season by reason of the necessity which forced us to put to sea to join our employers,

In 1906 the Newfoundland Government further enacted an absolute prohibition of our shipping on any foreign fishing vessel; but thanks to the action of the Imperial Government in withholding assent to same, this Act did not become law.

During the past season, our fishermen proceeded outside the three-mile limit and shipped to the Americans, as in 1905. Many hundreds of our fishermen shipped on *bonâ fide* American vessels in 1906, and a large number shipped on so-called Canadian vessels. These latter were vessels that flew the British flag and carried a Canadian register; but a great many were chartered to and fishing for Americans.

During the prosecution of the past season's fishery an attempt was made by the Newfoundland Government to interfere with our operations. The so-called Bait Act, Chapter 129, of the Consolidated Statutes of Newfoundland (second series), was brought into force, and two fishermen, residents of Wood's Island, Bay of Islands, were cited before the Magistrate, at Bay of Islands, charged with putting herring on board an American vessel contrary to the provisions of the said Bait Act. After hearing the evidence, &c., the Magistrate convicted the defendants of a breach of the Act, and fined them \$500 each, or three months' imprisonment. The matter has been carried to the Supreme Court of Newfoundland on appeal, and is still undisposed of.

In the meantime, official statements have been made in the House of Assembly; and elsewhere to the effect that the majority of the people of this coast are in favour of the policy of the Newfoundland Government.

We beg to state most emphatically that the people of this coast are unanimous in condemning this policy as one which is injurious to the best interests of the Colony as a whole, and ruinous to the livelihood of the people of this Western Coast.

For the reasons, therefore, that (A) the American market is the only adequate market available to us in which to dispose of our herring; (B) no substitute sufficient and immediate is provided for this market, and without it we shall be compelled to abandon our fishery and take our families elsewhere to seek a living; and (C) the policy of the Newfoundland Government is, in our opinion, contrary to natural justice to the best interests of the Colony.

We respectfully pray Your Excellency to submit this statement to His Majesty in Council through the proper channels; and we further pray that His Majesty in Council will be pleased to take such action as will enable us to enjoy our fishery as we enjoyed same prior to the legislation of 1905 and 1906.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's, April 4, 1907.*

(Received April 27, 1907.)

MY LORD: With reference to my despatch of the 2nd instant, I have the honour to enclose, for your information, copy of the leading article in the "Daily News" of St. John's, of this day's date, which represents that the resolution adopted by the public meeting that

took place at Bay of Islands on the 26th ultimo was well attended, and that the resolution was adopted with practical unanimity, and expresses the deliberate opinion of the community. I have at present no other means of verifying these statements.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

["The Daily News," St. John's, April 4, 1907.]

THE BAY OF ISLANDS PROTEST.

The controversy over the herring fishery is inseparable from the welfare of the people of Bay of Islands.

To members of the Legislature and residents of the city, the question is more or less an academic one, whilst to the fishermen who engage in the Labrador and Bank fisheries, the participation or otherwise of the Americans in the herring fishery does not immediately appeal.

If we are to get down to the kernel of the controversy, we must get the opinion and wishes of the people most directly interested, and it is this fact which makes the public meeting, which was held at Bay of Islands, last week, one of extraordinary importance.

Sometimes public meetings are engineered by political parties for party purposes. Not so with the meeting held on Tuesday.

It was the spontaneous and unbiassed expression of public opinion. That such a meeting was to be held was not, so far as we can ascertain, known outside of Bay of Islands, then enduring the rigours of a snow blockade; indeed, the first intimation received by politicians of either side, or by the public generally, was the publication of the Resolutions in Thursday's issue of the "News."

Sir Robert Bond stated in the House of Assembly that two-thirds of Bay of Islands favoured his policy. The statement was so ridiculous as to be scarcely worthy of serious contradiction, but if contradiction is necessary, Tuesday's meeting gives it in emphatic and uncompromising tones.

The meeting itself was well attended, and the speakers were amongst the leading citizens of the community.

The chairman was a typical fisherman, and there was absolutely no opposition to the adoption of the Resolutions and Address.

Only one dissenting voice was heard, and that belonged not to a fisherman, but to a gentleman whose sympathies would naturally lean towards his Canadian fellow-countrymen who, by the exclusion of the Americans, would be benefitted at the expense of Newfoundland.

The practical unanimity of sentiment was no matter of surprise, inasmuch as from those who have been on the spot and who have discussed the Government's policy with residents and fishermen during the fall and the winter, there has come only one answer,—“The fishermen are as a unit in their opposition to the policy of the Government.”

Of course, an occasional voice of a rank partisan may be heard, anxious to defend the Government's policy at any cost, but it is not

the interests of the herring fishery but control of Government expenditures, which prompts the utterance.

It is significant of the widespread unpopularity of the policy that every one of the speakers, on Tuesday night, with one exception, was an active supporter of the Bond administration at the General Election, and for all we know, this question excepted, may be so still.

The more the policy of the Government is considered in connection with this matter, the more extraordinary their attitude appears.

Sir Robert Bond has no intention whatever of driving the Americans away from our fisheries. His sole object is to use them as a bludgeon to compel acquiescence in the policy outlined by the Bond-Hay Treaty, a policy, at its best, of questionable advantage.

Let that policy once be assented to and, instead of the Americans being excluded, Sir Robert Bond will open the gates of all our harbours and give free bait and free entry to every part of the island.

There was a very simple way of dealing with this matter, one which was urged long ago, and one which would certainly have been adopted if there was any sincerity in the Government's action and policy.

If a duty were placed on all herring exported from Newfoundland, corresponding to the amount of duty placed on herring imported into the States, despite the difficulties that might hedge around the collection, an equitable arrangement would surely eventuate, and not at the expense of the independence of Newfoundland or the rights of her fishermen.

Sir Robert Bond's Government claim that their policy is on the principle of the greatest number, principle of the greatest good to the greatest number. Whilst we do not admit the justice of the claim, we accept it for the sake of argument.

If the greatest good for the greatest number demands the sacrifice of the fishermen of Bay of Islands in the interests of the Colony, then, to carry out Sir Robert Bond's own argument, there is justice in the sacrifice of the Colony in the interests of the Empire, on the same principle of the greatest good for the greatest number.

The Government have thus adopted an unsound and dangerous argument, and one that is already coming back against them with terrible force.

The article which we published the other day from the "Birmingham Daily Post," the great Chamberlain organ, and one of the papers which Sir Robert Bond has recently been eulogizing in the House, is an illustration of the real feeling which exists amongst the British Press.

Through this anti-American policy we have been placed in a position which is humiliating to all concerned.

It is humiliating to our fishermen, as it has transformed them from a position of independence to a position of servitude, and alleged illegal servitude at that.

It is humiliating to Newfoundland, because it places us in the position of the frog in the fable, or of the dog who idly bayed at the moon.

It is humiliating to the United States, because rights that have been unchallenged for generations have been wantonly disputed and relationships, mutually satisfactory, have been rent asunder.

It is humiliating to the Empire, because it is subversive to its dignity, and at the same time endangers the peace of the world; and

this for an injury to those most interested, and a very questionable advantage to Newfoundlanders at the best.

The only ones that will really benefit by the whole business are the Canadians. They are sharp enough to see this, and are already availing of their advantages.

Possibly a few troublesome politicians may also benefit. Grand crosses, knighthoods, and decorations sometimes have a soporific effect in sharp contrast to the activity with which they are sought after.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's, April 17, 1907.*

(Received April 27, 1907.)

MY LORD: I have the honour to enclose, for your information, an extract from the "Daily News" of St. John's, of this day's date, in which is discussed the adoption by the fishermen of Bonne Bay of the Resolution recently transmitted to me from Bay of Islands, and forwarded in my despatch of the 2nd instant.

2. The Resolution from Bonne Bay has not yet reached my hands.

I have, &c.,

W. MACGREGOR.

[Inclosure.]

[Extract from Daily News, St. John's, Newfoundland, April 17, 1907.]

BONNE BAY PROTESTS.

A message published in Monday's "News," stated that a public meeting of the fishermen of Bonne Bay had unanimously adopted resolutions of protest against the herring fishery policy of the Government.

This is a practical endorsement of the recent decision of the people of Bay of Islands, who spoke with no uncertain sound some days ago.

Do we properly appreciate the terrible seriousness of this business to the people of the Northwest Coast? Their whole livelihood is at stake. With the Americans excluded they have, at present, nowhere else to look.

There are many who believe that the Canadians will fill the breach, but all that the Canadians have done so far is to charter their vessels or sell their cargoes to the Gloucester combine—they have found no new markets.

Others believe that our own merchants will take the business up. We trust they may; but if they will not do it with a promised bounty, what hope is there of them doing it at all?

If ever the Americans are effectually excluded, it may be that the West Coast merchants who engage in the Bank fishery will come to the front; but before killing the goose that laid the golden egg the substitute or successor should have been found.

The agitations and protests at Bay of Islands and Bonne Bay are the spontaneous expressions of popular feeling. It is the voice of the breadwinner demanding that he be not robbed of the means of earning bread for his loved ones.

In St. John's we may discuss the matter academically, dilate upon constitutional privileges and disabilities, and talk learnedly or gaseously of treaties and international laws. On the West Coast the fishermen have neither time nor inclination for these things. They see their livelihood imperilled, their prosperity, nay, their very independence at stake, and have, therefore, carried their appeal direct to the fountain head of authority.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's, April 23, 1907.*

(Received May 17, 1907.)

MY LORD: I have the honour to transmit herewith copy of an Address to myself adopted at a public meeting of fishermen and residents of Bonne Bay, on the 12th instant, with reference to the autumn herring fishery on the West Coast, and the position of American fishermen in that industry.

Your Lordship will not fail to notice that the people of Bonne Bay protest against the policy of this Government, and appeal to His Majesty the King for protection and preservation.

The terms of the Address are identical with that passed by the people of Bay of Islands.

There seems to be but little doubt that these Addresses represent in a general way the feelings and wishes of Bay of Islands and of Bonne Bay. They, however, comprise but a small part of the population of the island. At the same time it is impossible to conceal from oneself the fact that the people of Bonne Bay and of Bay of Islands are those that are most directly interested in, and dependent on, this particular herring fishery, in which practically no others, except the people of St. George's Bay, participate.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

At a public meeting of fishermen and residents of Bonne Bay, held here on the 12th day of April, A. D. 1907, the following resolutions were passed and adopted:

Whereas we, the people of Bonne Bay, view with alarm the policy
* * * [see Inclosure 1 in No. 61] * * * of 1905 and 1906.

Dated at Bonne Bay the 12th day of April, A. D. 1907.

WM. S. WHEELER, *Chairman.*
J. C. SEELEY, *Secretary.*

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's, April 24, 1907.*

(Received May 17, 1907.)

MY LORD: I have the honour to transmit herewith, for your information, in continuation of previous correspondence in connection with the case of the two fishermen Dubois and Crane, copy of a letter which I have received from the Attorney-General, Sir Edward

Morris. Your Lordship will notice that the Attorney-General states that it is not likely that the judgment in this case will be given before the May term of the Court, which opens on the 1st and closes on the 21st of that month.

I have, &c.,

WM. MACGREGOR.

[Inclosure.]

ATTORNEY-GENERAL'S OFFICE,
St. John's, Newfoundland, April 20, 1907.

SIR: I have the honour to report, for your information, that the arguments before the Supreme Court in the case of O'Reilly *versus* Dubois and Crane closed on yesterday.

It is certain that no judgment in this case will be given before the May term, which opens on the 1st and closes on the 21st. I may say that during the course of the arguments Sir James Winter was retained in connection with Mr. Howley on behalf of the appellants. The main grounds relied on by the appellants were that under a construction of the Bait Act the appellants were not required to take out a licence; and that the licence contemplated by the Act is not to individual fishermen, but to the vessel or to the master.

They abandoned the position that they were citizens of the United States on an American vessel, or that they had any nationality as American subjects or inhabitants of the United States within the meaning of the Treaty, and they claimed that they were fishermen of the Colony employed by American fishermen who were possessed of Treaty rights.

The Court intimated that only as a last resort would they pass on the question of the treaties.

I have, &c.,

E. P. MORRIS,
His Majesty's Attorney-General.

HIS EXCELLENCY SIR WILLIAM MACGREGOR, M.D., K.C.M.G., C.B.

Governor MacGregor to Lord Elgin.

GOVERNMENT HOUSE, *St. John's, May 7, 1907.*

(Received May 17, 1907.)

MY LORD: I have the honour to enclose, for your information, copy of a letter I have just received from Sir Edward Morris, Attorney-General, covering a report—which I enclose in duplicate—in the Evening Herald of this day's date, of the judgment of the Chief Justice, Sir William Horwood, in the case of Crane and Dubois, appellants, against O'Reilly, respondent.

2. It will be noticed that Mr. Justice Johnson concurs in the judgment of the Chief Justice, and that his judgment will be given to-morrow. The case is therefore disposed of so far as the Supreme Court is concerned, whatever may be the opinion of Mr. Justice Emerson.

3. It will also be noticed that the Attorney-General draws attention to the fact that the decision in no way involves an interpretation of either the Treaty of 1818, or of the *Modus Vivendi* of 1906; but is

confined to affirming the conviction by the Magistrate on the lines of a violation of the Bait Act.

I have, &c.,

WM. MACGREGOR.

[Inclosure No. 1.]

ATTORNEY-GENERAL'S OFFICE,
St. John's, Newfoundland, May 7, 1907.

SIR: I beg to inform you that a judgment was given to-day by the Chief Justice, concurred in by Mr. Justice Johnson (Mr. Justice Emerson intimating that he would give a judgment later, but not indicating the nature of the same), in the case of O'Reilly *versus* Dubois and Crane. I enclose you the full text of the judgment taken from the Evening Herald newspaper of this evening's date. You will notice that the decision in no way involves an interpretation of the Treaty or of the *Modus Vivendi*, but proceeds entirely on the lines of a violation of the Bait Act.

I have, &c.,

E. P. MORRIS,
His Majesty's Attorney-General.

His Excellency Sir WM. MACGREGOR, K. C. M. G., C. B., &c., &c., &c.

[Inclosure No. 2.]

[The Evening Herald, St. John's, Newfoundland, Tuesday, May 7.]

SUPREME COURT—CRANE, ET AL, APPELLANTS, *versus* O'REILLY,
RESPONDENT.

This morning Chief Justice Horwood and Justice Johnson, constituting a majority of the Court, delivered their judgments in this case, confirming the decision of Magistrate March and dismissing the appeal.

Justice Emerson stated that as he had been on circuit he had not had time to deal with the matter and would give his judgment later.

Judgment of Chief Justice:

The appellants are local fishermen who have been charged upon the complaint of the respondent, a special commissioner appointed for the purpose of enforcing the Bait Act, with unlawfully putting on board the schooner *Ralph L. Hall*, of Gloucester, Massachusetts, United States of America, a quantity of bait-fishes, to wit, a barrel of herring without a license for that purpose, contrary to the provisions of the Consolidated Statutes (second series) Chapter 129, entitled of "The exportation and sale of bait-fishes."

Upon the hearing before the Magistrate at Bay of Islands, it was proved that Crane and Dubois put herring on board the schooner *Ralph L. Hall*, that one of them was seen to dip up herring from a dory alongside the schooner and pass them to the other on the deck of the schooner; that they subsequently admitted that they had put on board the schooner three or four barrels of herring while the vessel was at Woods Island, and that they had not a license. Crane and Dubois, while on shore at Woods Island, were engaged, under a verbal agreement, to form part of the fishing crew of the *Ralph L. Hall*. Under this agreement, they were to receive \$1 per barrel for herring, and were to be furnished by the schooner with boats and nets, to pay for the nets in event of loss. In pursuance of this agree-

ment they proceeded in a vessel to a distance of three miles outside of Woods Island, for the purpose of joining the *Ralph L. Hall*, which had preceded them, and was awaiting them at this point. They there joined the schooner, and their names were written on the ship's articles by the mate. The *Ralph L. Hall* then returned to the port and remained there. Crane and Dubois engaged in catching herring at Woods Island for the schooner, and while so engaged, lived on board the *Ralph L. Hall*, and used her nets and boats. From the evidence given upon the hearing before the Magistrate, it did not appear whether or not they had signed the ship's articles and when this appeal first came before the Court, counsel obtained leave to furnish evidence. Since then a commission was taken for the examination in Gloucester, Massachusetts, of the master of the *Ralph L. Hall* and others; applicants have, however, failed to show that the ship's articles were signed by them. On the contrary, the evidence taken upon the commission is, that the names of some twenty-three fishermen, including the appellants, were written on the articles by the mate of the *Ralph L. Hall*, and that the legal requirements as to signature and attestation were not complied with. The United States shipping commissioner at Gloucester, who was examined as a witness, proved that in the United States law there is no distinction between seamen and fishermen as regards the forms and nature of their shipping agreements. There is absolutely no proof that the appellants acquired the status of United States seamen or fishermen, and after the return of the commission, appellants' counsel, upon the opening of the argument, stated that the appellants abandoned the position that they were seamen of an American vessel, or that they had any nationality as American subjects or inhabitants within the meaning of the Treaty, but that they would contend they are fishermen of this Colony, employed by Americans, who were possessed of Treaty rights.

The Magistrate convicted the appellants of the offence with which they were charged, and imposed upon them the following penalty, "that is to say each said defendant to pay a fine of \$500, and failing to pay said fine, to be committed to His Majesty's gaol at Bay of Islands for the space of three months."

The appellants' grounds of appeal, as set forth in their amended notice, are, that the judgment of the Magistrate was contrary to law; and that the facts proved at the hearing before the said Magistrate did not constitute an offence against Chapter 129 of the Consolidated Statutes of Newfoundland, second series.

The appellants' main contention is, that they are not persons who are required by the Act to have licenses, and that the section under which the complaint is made, applies only to owners or masters of vessels. That the *Ralph L. Hall*, being a United States fishing vessel, had a Treaty right which was equivalent to a license; and that the appellants were employed by this vessel and could not be guilty of an offence under this statute if the vessel herself was not. An objection has been taken to the form of the complaint, on the ground that it does not specifically state the purpose for which the bait-fish was put on board, and an exception has also been taken to the form of the conviction as bad for uncertainty in that it is stated in the alternative. I propose to deal first with the technical objections. As to the objection to the form of the complaint, I have to hold, that the charge is

stated with sufficient definiteness and complies with the Statute. The contention that the conviction is bad in form because it imposes imprisonment in default of payment of the fine, is wholly untenable in view of the Statute, 60 Vic., cap. 23, section 1.

"Whenever, after the passing of this Act, any person shall be convicted summarily of an offence for which a fine or pecuniary penalty is provided either by any Statute of the Imperial Parliament or by an Act of the Legislature of this Colony, the person making default in the payment of such fine shall be liable to imprisonment according to the scale provided in the schedule of this Act, without recourse to distress or other alternative punishment, and upon the imposition of such fine, the corresponding term of imprisonment shall form part of the sentence by implication." *Kean versus Winsor*, 1906, L.R. 183, shows the application of this section to a prosecution under 11 and 12 Vic. Cap. 44 since that case is not distinguishable in principle from the present.

In order to deal with the main objection of the appellants, it becomes necessary to carefully examine the language of Chapter 129 under which the prosecution is taken.

The first section of the Chapter, sub-section 4, upon which the complaint is framed, is as follows:

"No person shall (4) take, ship or put or haul on board or assist in taking, shipping, putting or hauling on board of any ship or vessel for any purpose whatever, any herring, caplin, squid or other bait-fishes from, on, or near any parts of this Colony or its Dependencies, or from, or in any of the bays, harbours, or other places therein, without a license in writing to be granted and issued as hereinafter provided."

The following section (2 of Cap. 129) provides that licenses may be granted for any of the following purposes: (*inter alia*), (f) to take, ship or put on board a ship or vessel, or to carry or convey on board a ship or vessel, bait-fishes for exportation, for food or consumption, (h) to take, ship or put on board a vessel, or to carry or convey on board a ship or vessel, bait-fishes for exportation, for bait purposes, (1) to take, ship or put on board a ship or vessel, or to carry or convey on board a ship or vessel, coastwise, to be discharged or landed or transhipped to some other ship or vessel, within some port in this Colony."

A license cannot be issued except under the authority of the Governor in Council, and the applicant is required by the Statute to first make an affidavit setting forth the following particulars, viz.: the name of the vessel on board of which it is intended to convey or export bait-fishes, the purpose for which such bait-fishes are intended to be conveyed or exported, whether for food or consumption, or for bait purposes, the country to which it is intended to export the same, or the place where the fishery is to be prosecuted for which such bait-fishes are to be used.

The Act also contains a provision empowering the Governor in Council from time to time to suspend or limit by proclamation, the operation of the Act.

If we look at the object of the Statute, we find the Act was passed in the interest of the fisheries of the Colony. It prohibited the sale and exportation of bait and, to make the prohibition effective, it prohibited any dealing in bait-fishes in such a way as would lead up to,

or form part of their exportation or sale. It declared it to be unlawful to sell bait-fishes to another, not having a license under the Act, who purposed shipping or exporting them; and throws upon the party accused the onus of proof that the bait-fishes were not intended for shipment or exportation. It makes it an offence for a man to have in his possession bait-fishes intended for exportation.

The putting on board, because it is one of the incidents of exportation, is an act which the Legislature has expressly aimed to prevent. The interpretation of "vessel" too, is given in most general and unrestricted terms.

It has been argued that no license is provided for persons in the position of the appellants. So far as Statutable provision is concerned the authority conferred by Section 2 of the Act is ample, and the complement of Sub-section 4 of Section 1 is to be found in the sub-sections of Section 2 which I have before quoted.

Then it is argued that although there were nine purposes for which, according to Section 2, licenses might be issued, the Governor in Council had only prescribed two forms of license. These forms, however, purport to deal only with specific purposes, and leave untouched other matters, and it is not a legitimate inference that a limitation to the scope of the Act is to be implied from this fact. In support of the contention that the appellants do not come within the scope of the Act, it has been said that persons in their position were unable to comply with the requirements of the fifth and seventh sections. To say that the Act does not apply to persons because they have no control over the movements of the vessel on board of which they put bait, or the final disposition of the cargo, would be to place upon the Statute a very restricted application. It was not necessary for the appellants to possess such control in order to comply with the section. They were bound to make inquiry, and satisfy themselves as to the purpose for which the bait-fishes were required, and place themselves in a position to comply with the provisions of the Act.

The words of the Statute import an absolute prohibition against certain acts being done without a license issued under the authority of the Governor in Council.

The question for the determination of the Court in the present appeal is whether the appellants having put herring on board the *Ralph L. Hall* without a license have been guilty of an infraction of Sub-section 4 of one of the Chapters.

It is to be observed that the sub-section is not only directed against every person who "takes, ships or puts or hauls on board any vessel" any bait-fish, but governs the case of persons who "assist in taking, shipping or putting or hauling on board of any ship or vessel, bait-fishes for any purpose whatever, without a license."

Whether the defendants might have been prosecuted under the Chapter for selling bait for the purpose of exportation to a person not holding a license, is beside the question. The issue here is simply was it necessary for them to have held a license from the Governor in Council for the purpose, before they put the bait-fish on board the vessel?

The language of the section is most comprehensive, and indicates that the intention of the Act was to prohibit the putting of bait-fishes on board vessels under any circumstances, unless by the authority of a license. To prevent any evasion of this statutable prohi-

bition, the Act prohibits even the procuring,—having in the possession for the purpose of exportation, receiving in barter,—assisting in taking, shipping, &c. The words being plain and obvious, are not to be curtailed in their meaning by reason of any hardship they impose, or because of the inability of persons to comply with their requirements. The prohibition contained in Section 1 is too clear and absolute to admit of any doubt, and there is nothing to show that the appellants can claim exemption from it.

The Attorney-General, in his argument, has drawn our attention to the fact that this Act has to some extent been the subject of judicial interpretation. In *Hann v. Sullivan* (Newfoundland Law Reports, 1894) the late Chief Justice in delivering judgment, after pointing out that in the particular year with which he was dealing, only three forms of licenses were authorised by the Governor in Council, viz.: a license to local fishermen permitting the hauling or catching and selling of bait-fishes, a license to vessels belonging to the Colony prosecuting the deep sea fishery, and a license to foreign fishermen or fishing vessels, makes the following comment:

“Up to the month of June no other kind of license was permitted to be issued, and no form of license for the exportation of bait-fishes was issued or sent to officers to be issued, preceding or during the season now in question, and consequently there was an entire suspension of authority to export bait-fishes in that year.”

In adjudicating on the rights of the parties in this case, it has not been necessary for us to enter upon a consideration of the arguments addressed to us by counsel, as to the interpretation of the Convention made in 1818 between His Britannic Majesty and the United States of America. I may observe that Chapter 129 recognizes the rights acquired by the inhabitants of the United States under this Convention, for it contains a provision, common to our fishery legislation, to the effect that nothing in the Chapter is “to affect the rights and privileges granted by Treaty to the subjects of any State in amity with His Majesty.” The appellants, however, do not possess any treaty rights, as they are British subjects, resident in this Colony. Whether “inhabitants of the United States” who “in common with the subjects of His Britannic Majesty” possess “the liberty to take fish of every kind” on certain parts of the coasts of Newfoundland, could lawfully have shipped bait-fish on board the *Ralph L. Hall* at Woods Island without a special license, is immaterial, and cannot affect the rights or liabilities of the appellants. It is not competent for us to consider whether under the Treaty of Washington, which has since expired, it was the practice of United States fishing vessels to purchase bait-fish from local fishermen, before there was any restriction upon the sale of bait, and when vessels of any nationality could have bought what bait-fish they desired, for it was with the object of putting an end to the conditions which then obtained with respect to the traffic in bait, that the Statute was passed. It is impossible for the appellants to set up that the acts complained of were covered by any Treaty right. The appellants did not form any part of the crew of the *Ralph L. Hall*. The attempted engagement of these men by this foreign fishing vessel was absolutely void, being in contravention of the Statute law of this Colony. By the Statute, 5 Edward VII., Cap. 4, Section 1, it is declared illegal for the master of a foreign fishing vessel to “engage or

attempt to engage any person to form part of the crew of the said vessel, in any port, or on any part of the coasts of this Island."

It is clear that a contract is void if prohibited by a Statute though the Statute inflicts a penalty only because such a penalty implies a prohibition (per Park B., *Copp versus Rowlands*, 2 M. and W., 149, and per Lord Holt, *Bartlett versus Vinor*. Carthens, 252). The attempted engagement of these men being nugatory, there can be no identity between the appellants and the *Ralph L. Hall*. With respect to the application of the Bait Act, the appellants therefore must necessarily stand towards the vessel in the relation of local suppliers of bait-fish, and, before they are permitted to ship or put bait-fish on board the vessel, Section 1 of this Chapter requires that they should hold a license. The license which this section requires them to hold, is a license issued under the Act by the authority of the Governor in Council. The appellants not having had such a license, are guilty of the offence with which they have been charged, and the conviction must therefore be affirmed with costs. Sir James Winter, K. C., and Mr. Howley, counsel for appellants; the Attorney-General and Mr. Kent, K. C., for respondents.

Mr. Justice Johnson's judgment, to the same effect, will appear to-morrow.

Sir James Winter, K. C., intimated his intention to appeal to the Privy Council.

Governor MacGregor to Lord Elgin.

TELEGRAM.

(Received 8.35 p. m., May 8, 1907.)

Am informed by Attorney-General that he does not intend to enter any further prosecutions against fishermen in position of Dubois and Crane on account of last season transactions.

MACGREGOR.

Governor MacGregor to Lord Elgin.

TELEGRAM.

(Received 3.55 p. m., August 2, 1907.)

My Ministers have adopted a long minute in reply to your telegram of the 24th of July, approving position taken by my Prime Minister in recent correspondence with your Lordship. They cannot be consenting parties to any limitation, suspension, or abrogation of Colonial laws in favour of American citizens. They strongly object to continuance of 1906 *modus vivendi*, and consider that they, and not American Government, are the best judges as to whether last year's *modus vivendi* can be continued without causing hardship to the Colony. This Government, having proposed reference to Hague Tribunal, and concurred in offer of His Majesty's Government, contained in despatch of 20th June last, Foreign Office to American Ambassador, to communicate to American Government copy of Fish-

ery Regulations now in force, and to consider American representations on the subject, cannot go further. They submit that as fishing does not commence until October, there is ample time for examination of regulations and amendment of the same if found necessary before that date.

If American Government is not prepared to act in accordance with this liberal proposal, they consider it cannot be regarded as unreasonable that His Majesty's Government should insist on Americans conforming to the local laws pending decisions of Hague Tribunal. Concerning employment of local fishermen, they refer to the fact that prior to 1818 His Majesty's Government held that for American vessels to load with fish not caught or cured by people of United States of America was illegal, and that in 1807 His Majesty's ship *Adonis* seized two American vessels for so doing. See despatch, Governor Holloway to Sir Stephen Cotterell, 9th September, 1807. If Americans contend that only regulations and laws in force at the time of signing 1818 Treaty applies to them, they are barred by this fact from setting up the right to hire Newfoundlanders. Committee cannot admit that Treaty of 1818 gives Americans right to use purse seines, and are unable to depart from position taken that Americans coming within local jurisdiction are subject to all laws that apply fishermen of this Colony. They consider that as Treaty is antiquated and conflicts with national interest, its abrogation would only be in accordance with precedent established by American Government in matter of Clayton-Bulwer Treaty of 1850. They do not consider they should be called upon to choose between (engagement?) of crews by Americans and use of purse seines by them, as Americans have no right to either one or the other, and both involve a breach of the laws of the Colony. They again guarantee that if they are left unhampered by His Majesty's Government in enforcing laws of this Colony, there will be no breach of the peace, and they consider a *modus vivendi* entirely unjustifiable and unnecessary. Full minute goes by post.

MACGREGOR.

Extracts from the Annual Report of the Canadian Department of Marine and Fisheries, 1908-9.

REPORT ON STEAM TRAWLING, BEAM AND OTTER. BY JOHN J. COWIE.

[Extract.]

While on the coast in connection with herring curing, I took occasion to ascertain, in person, the facts concerning the operations of the steam trawler *Wren* in our waters during the past season, and as this is an entirely new mode of fishing from a Canadian port, and further, in view of the trouble, more or less serious, which has existed in Europe, between steam-trawl fishermen and line fishermen, since its inception there, it may be of interest to the department, and of some future service, in the event of the expansion of the new industry, if I give you a description of this mode of fishing, and a report of the work of the first Canadian steam trawler during the late summer and autumn; together with my observations on trawling in general, and a sketch of what has been done, from time to time, for its regulation in Great Britain.

DEFINITION OF TRAWLING.

In the first place, a considerable amount of confusion exists as to the use of the term trawling and what it really applies to.

The name is used on the American side of the Atlantic to denote a totally different style of fishing from that carried on under the same name in any European waters.

Trawling as understood and carried on by United States, Canadian and Newfoundland fishermen, is simply fishing for cod, haddock, and other round fish, with long lines to which are attached a great many baited hooks, at intervals of about one fathom.

These lines are called trawls, and are set in the water, anchored, and buoyed, and hauled in from "dories" or small boats. They stretch over a considerable portion of the fishing ground on which they happen to be set.

This mode of fishing is also common in Europe, but it is known only by the name of long or great line fishing.

The term trawling, on the other hand, as used in Europe is applied to a method of fishing which consists in the dragging of a strong bag-shaped net over the sea bottom, by either sailing or steam vessels, for the capture of both round and flat fish.

Trawling, as such then, has been carried on in European waters for very many years. As long ago as the year 1839, regulations, for the carrying on of this and other kinds of fishing in the English channel, were framed at a convention, concluded at Paris, in August of that year, between representatives of the British and French governments. Article XVI of the said convention says that 'Trawl fishing may be carried on during all seasons in the seas lying between the fishery limits which have been fixed for the two countries.' Other articles regulate the length of beam and size of mesh of the net to be used, besides laying down rules for prevention of trouble between trawl boats and herring or mackerel boats during fishing operations, and which I shall touch upon later in this report.

There are two distinct kinds of trawling carried on in the North Sea and bearing two distinctive names, viz: Beam trawling and otter trawling.

Again, there are sailing trawlers—vessels propelled by wind alone—and steam trawlers—those propelled by steam.

THE BEAM TRAWL.

Beam trawling, being the original method, is by far the older of the two.

The instrument known as a beam trawl, as the name implies, consists of a wooden yard or beam of a length varying from 40 to 50 feet, made as a rule, of elm or some other tough wood. This beam is supported at each end by a triangular shaped iron frame, called a head-piece, into which are fitted the ends of the beam.

The height of the beam, when resting on the head-pieces, is about four feet from the ground. The net takes the shape of a huge bag, and may be of any length from mouth to bottom.

The upper part of the mouth of the net is fastened to the beam, and the under part, along which runs a ground rope, is secured to the bottom of the head irons, thus keeping the mouth open. The

lower side of the triangular head irons is made so as to slide easily over the sea bottom, like the runners of a sleigh.

This combination then, of net, beam, and irons is dragged behind the vessel over bottom which has been found smooth enough for the purpose, and the operation is called beam trawling.

STEAM TRAWLING.

Up till nearly thirty years ago trawl fishing was carried on entirely by sailing vessels. With the increasing fresh fish trade, the advantages of steam vessels, not only in the dragging and handling of the cumbersome beam trawl, but in their ability to make speed to the land in any weather, with their fresh fish, soon became apparent, and in the early eighties of the last century, steam propelled vessels came into common use for trawl fishing in the British islands.

With the exception of one or two places on the south coast of England where some sailing trawlers are still in existence, steam vessels are now used entirely all round the British coasts.

THE OTTER TRAWL.

Not long after the general introduction of steam vessels in this class of fishery, a further advance was effected in the shape of improved and less cumbersome trawling gear.

I think it was about the year 1889 that some one, with an inventive turn of mind, hit upon the idea of keeping the mouth of the trawl-net open without the use of the clumsy beam and irons.

The new device consists in attaching what is called a board, measuring about 5 feet by 3 feet, to each end of the mouth of the net.

The ropes by which the vessel drags the net are fixed to the boards in such a way that, as the vessel steams ahead, the pressure of the water on the inner face of the boards drives them apart and keeps the mouth of the net quite as open as the old beam arrangement.

This new kind of gear is named the 'Otter Trawl,' hence the use of the double name 'Beam and Otter Trawling'.

I would here point out that in the making of laws regarding trawling in Canada, the two names should be used; because if 'beam' trawling only was forbidden in certain areas there would be nothing to prevent parties so inclined to go on using an 'otter' trawl in the prohibited waters.

The 'otter' invention proved so successful when first used that all steam vessels at once discarded the old beam and adopted the new otter trawl.

The advantages of the otter trawl are to be found in that it occupies very little space on board the vessel, is easier to handle, can be used over much rougher bottom, and captures a greater proportion of round fish than the beam trawl.

Otter trawling, then, is the latest, and most successful mode of capturing large quantities of fish ever put in operation. Those sailing vessels on the south coast of England, to which I have referred, continue the use of the original beam trawl for the very obvious reason that in a light wind they could not make the necessary speed to force the boards of the otter trawl apart and keep the mouth of the net open, consequently, they go after the slower-moving flat fish with the beam trawl.

Extract from the Birmingham (England) "Daily Post", March 9, 1907.

Sir Robert Bond, the Prime Minister of Newfoundland, has sent us a document containing a verbatim report of a speech delivered in the House of Assembly protesting against the Fisheries arrangement with the United States. It is a verbose and contentious production which can hardly have failed to have had a mischievous effect upon the minds of the colonists. We regret that he should have found himself unable to accept the decision of the Imperial Government without taking a course calculated to foment resentment in the island; but we do not think that the circulation of his protest in this country will result in the enlistment of English opinion in his favor. The issue at bottom was whether the views of the Newfoundland Government should prevail over those of the British Foreign Office. All the details of the controversy can be epitomised into the question whether certain local legislation avowedly directed against the United States fishing industry was or was not consistent with a reasonable interpretation of indubitable treaty rights held by the United States. On a point such as this the English public will, we think, prefer to abide by the judgment of Sir Edward Grey. Local considerations have of necessity to be subordinated to Imperial policy. Sir Robert Bond seems to us to fail to make out his case, because he does not adequately appreciate the inability of one Government to vary a treaty without the consent of the other contracting party. The United States Government complained—in that peremptory fashion which the diplomatists of Washington are so slow in learning to avoid—of certain definite acts done under the authority of the local administration, and they requested a faithful observance of their contractual rights. Our Government had to make up their minds as to whether the facts of the complaint were as stated, and, if so, whether they constituted a breach of their treaty obligations. Communications were interchanged with the Newfoundland authorities. There was no dispute on the facts. The issue was whether the terms of the treaty justified the complaint and the demand for the rectification of what was claimed to be a wrong. The Newfoundland Government took a negative view. The reasons they advanced for it were not deemed to be sufficient by the home authorities. They therefore rejected that view, and came to a decision of their own that the matter was one that must be the subject of a friendly arrangement with Washington. This was formulated in a *modus vivendi* for the present fishing season which conceded the requirements of the United States. Such a concession would not have been made unless the Foreign Office jurists thought that the treaty had been fairly interpreted in the provisional settlement. The alternative was to support Newfoundland in a doubtful cause and tacitly invite the United States to fight for what she judged to be her rights.

Because this alternative was not taken Sir Robert Bond declares that "a painful humiliation" has been inflicted upon Newfoundland. He objects that his Majesty's Government should have overridden local sentiment and disallowed a local statute; and he claims that the rights which entitled the colonists to make their own statutes become the "most odious of all wrongs and the most vexatious of all

injustice" when disallowance is enforced. This may be passable rhetoric, but the rights are conditional upon disallowance when local laws conflict with Imperial treaties. Sir Robert Bond says it has been exceedingly distasteful to himself and his colleagues to oppose the action of his Majesty's Government and we can well believe it; but it was with them a matter of public duty. They opposed from "a firm belief in the truth of the maxim—he serves the King best who directs his endeavors to the preservation of the rights and the privileges of the King's subjects." This is to beg the question. His Majesty's subjects are not limited to Newfoundland. There are a few millions in these islands who have rights; and not the least of them is that they shall not be embroiled in war with a foreign State because of breaches of treaty obligations by Sir Robert Bond's Government. With every deference to the people of Newfoundland we beg to remind them that the treaty of 1818 is between the United States and Great Britain and that, as we should have to bear the consequences of any failure to observe its stipulations, we have the right to regulate their conduct. They must, not to put too fine a point upon the matter, accept our interpretation of what they can or cannot do under the treaty; not their own. Sir Robert Bond sets up the opposite contention. He gives a version of colonial rights which would make them superior to that of the Crown. "I humbly and respectfully hold," he says, referring to the Bait Act which was suspended in opposition to the will of his Ministry, "that no power of suspension, limitation or abrogation of this law, or of any law, or this Colony which has received the Royal Assent is vested in his Majesty's Ministers or even in the Crown itself." His argument is that under the Bill of Rights, no law can be suspended by Royal authority without the consent of Parliament; and he appears to be thinking, not of the Imperial Parliament, but of the Colonial. It is a constitutional point of academic rather than practical interest, for it is quite certain that if the Legislature of Newfoundland became obstreperous and used the rights of self-government to the embarrassment of the Empire, the island would be deprived of those rights. Such a deprivation would not be without precedent in our Colonial history; and it is quite an open question whether if Newfoundland, under Sir Robert Bond cannot act in harmony with the Imperial authorities, it would not be well for her to dispense with a Ministry. A better way, however, than reversion to the Crown Colony system would be for the island to enter the Dominion to which she belongs geographically.

This course does not commend itself to Sir Robert Bond. In a passage in which he complains that Great Britain has done Newfoundland injustice because she is weak he asks why she should be forced into a union which she considers would be incompatible? Why should she become absorbed if she prefers to retain her autonomy? Why should she be thwarted in working out her own destiny "under the genius of the Constitution?" The answer is that nobody wishes to force her or to thwart her, and that the "genius" of the British Constitution is that in foreign affairs colonies are required to conform to treaty arrangements made by the parent State. Unless that principle is observed the Empire cannot be kept together. If Newfoundland, under the system of responsible government gives trouble in the observance of it, the conclusion to be drawn is that

she has not quite proved her fitness for that type of government. Sir Robert Bond denies that she has shown any unworthiness for the privileges she enjoys. It is a delicate subject that had better not be pursued too closely. We have heard of railway contracts and financial difficulties in the not very remote past which suggest doubt on the wisdom of having given the colony full self-government; and of these topics no local politician has greater knowledge than Sir Robert Bond. Politics in Newfoundland have ever had a commercial tinge; and we are by no means sure that beneath the furiously patriotic protests against an Imperial invasion of local constitutional rights there is not a desire to handle a little Imperial money. Embedded in Sir Robert's speech we find a curious passage to the effect that if the demands of the United States had to be conceded by the British Government "justice required that the injury and loss about to be inflicted upon the people of this colony should have been provided for by a measure of compensation that would equalise the tax imposed by the United States Government upon Newfoundland fish entering American markets." Here we get to the kernel of the whole matter. What the Bond Ministry want is "a measure of compensation,"—a financial solatium for the people of the island. "Had this course been pursued," adds Sir Robert, "this colony would have been spared the painful humiliation to which it has been subjected"—he means would have pocketed the humiliation with the cash—"and his Majesty's Government much adverse criticism, and no doubt embarrassment, for under such circumstances as these this Government"—and he goes on to say how very differently they would have acted. Clearly what the Imperial Government now have to do is to make up their minds whether they can put up with whatever embarrassment the Bond Ministry can make for them, or whether they shall offer a grant from the Exchequer.

Extract from "London Morning Post," September 11, 1907.

THE NEWFOUNDLAND FISHERIES—SIR ROBERT BOND'S POLICY—RECIPROCITY WITH AMERICA—PREMIER'S ACTION CRITICISED.

Sir James Spearman Winter, an ex-Premier of Newfoundland, who is at present in London, gave to a representative of the Morning Post yesterday his views on the Newfoundland Fisheries question. He has hitherto abstained from giving interviews to journalists, and it was only, he said, because of his belief that the public ought to be informed of the views which he and his friends hold that he made an exception in this case. Sir James Winter, like Sir Robert Bond, is a native of Britain's oldest Colony, having been born at Lamaline on New Year's Day of 1845. He was a member of the House of Assembly in his thirtieth year, was its Speaker for two years, and has held many Government offices, having been Premier and Attorney-General from 1897 to 1900. He represented the Colony at the Fisheries Convention of Washington and in London during the negotiations on the French Treaties question in 1890 and 1898. Sir James took a strong line against the policy of Sir Robert Bond; he said that public opinion in Newfoundland was on the whole indifferent to the

problems that centred round the *modus vivendi*; and he held that the whole agitation was being used as counter in the game that Sir Robert Bond was playing for reciprocity with America.

NEWFOUNDLAND INDIFFERENCE.

"The story," said Sir James, "is a long one, and so many words, and phrases have become jumbled together that considerable misapprehension exists in this country, and it is accordingly very difficult for the British people to grasp the crux of the problem. The real substantial public interests which are at stake are entirely different from the legal points that are involved in the *modus vivendi* between the Imperial Government and the United States—such as the use of purse-seines, the question of Sunday fishing, and the employment of Newfoundland fishermen by American firms. These questions are as far removed as anything possibly can be from the substantial public interests that are affected. I think one might safely say that the whole British Press and public have been entirely misinformed and misled both upon the real merits of the questions in dispute and with regard to the state of feeling in Newfoundland in relation to them. The feeling in the Colony is one either of total indifference to and even ignorance of the whole question, or, among a very small fraction of the population, of strong antagonism to the line of policy which Sir Robert Bond has adopted. By the latter part of that statement I mean that Sir Robert Bond's course of action and legislation operate directly against the personal interests and business of those who are engaged in the herring fishing on the west coast of Newfoundland; and if that policy is carried into effect it will destroy their means of livelihood. These men, until this trouble arose, have made a good living by selling herring to the Americans. But the rest of the Colony is entirely indifferent to the whole question; the subject, in fact, is hardly ever mentioned. The only fisheries in the Colony, therefore, which are directly affected by the present question are those which are much better served by being left alone, that is, not interfered with by Sir Robert Bond—fisheries which are accordingly preserved and conserved by the *modus vivendi*. Unrestricted permission has hitherto been enjoyed by Newfoundland fishermen to sell herring and other kinds of fish to American purchasers."

RECIPROCITY WITH AMERICA.

"Sir Robert Bond's ultimate object is reciprocity with the United States—that is, of course, access to American markets for our fishery products—and he hopes to force the Americans to give us this reciprocity by shutting off the sale by our West coast fishermen of herring to the Americans. Whether his ultimate object—reciprocity—would be promoted by this policy is, to say the very best for it, extremely doubtful. I for one do not believe that there is any chance of its succeeding, or that the Americans will be forced by any such means to give us reciprocity. In the meantime his policy is only bringing ruin upon our herring fishermen. It is nothing but an experiment on his part, and I believe will end only in failure, even if he were permitted to carry it out. That is the opinion of many

practical men. And certainly this reciprocity is not worth causing the least possible trouble either with the United States or the Imperial Government. The chances of success cannot be weighed in the balance against the grave difficulties that must arise out of any endeavour to force these measures."

THE BAIT ACT.

"Permit me," proceeded Sir James, "to go a little into details. In 1886 a Bait Act was passed for the purpose of preventing the supply of bait to the French fishermen who used it for the purpose of catching codfish on the Banks of Newfoundland. They took the cod into our markets, and by means of heavy bounties were able to undersell our fishermen. This Act was clearly intended to be used, first of all, to prevent foreigners from using our bait against us, and, secondly, it was enforced only against Frenchmen on account of their competition in the matter of codfish, which was then almost our sole means of livelihood. It was never intended to interfere with the ordinary catching, sale, and exportation of herrings as articles of consumption—a consumption that has always been going on, and, as far as the sale to the Americans is concerned, with considerable profit to our people. It is by what I can call only a perversion and misapplication of the spirit of that Act (although it may be according to the strict letter) that Sir Robert Bond is endeavouring now to interfere, as he has done, with the traffic with the Americans. In fact, the very same Act contains provisions for facilitating and securing the continuance of the traffic in herrings as articles of food. When that Act was passed in 1886 the country was on the verge of starvation on account of the French competition: it was passed as a measure of self-preservation; the very life of the Colony was at stake. But at the present moment there is no necessity for the application of that Act in the case of the United States. There is no strong public demand for reciprocity with the United States. We never had better markets for our codfish than at present. The Americans are doing us no harm whatever; there is only a desire on the part of some people to obtain an entrance into American markets for the sale of cod, and there is the widest difference among practical men on that point. The best opinion is against it. Americans are not likely to be consumers to any large extent of our codfish. Our best markets are the Roman Catholic countries that buy our salted fish—Brazil, Spain, and the countries of the Mediterranean—and our markets in these countries were never better than they are now."

LOYALTY TO THE EMPIRE.

"Accordingly there is no substantial Newfoundland interest to be served by this policy of coercion, or whatever you like to call it, against the United States. For this reason there is an entire absence of any semblance of public sympathy or support for the policy of Sir Robert Bond against the United States, and far less any semblance of antagonism, or ill feeling, or dissatisfaction against the Imperial Government for the part they have taken in this matter, except among a few interested politicians who think that political capital can always be made out of any cry against the Home Gov-

ernment. This is an appeal to the prejudices of the people, to the disloyal elements of the community. It is not even Jingoism" (added Sir James), "for Jingoism is really patriotism. But it has had no response in the Colony whatever. Newfoundlanders will withhold their support from any policy that is calculated to bring the Colony into unpleasant relations with the Mother Country. We pride ourselves on our loyalty. As soon as the people of Newfoundland understand that this policy might involve them in difficulties with the Mother Country or with other parts of the Empire then I am sure they will oppose it. We have sufficient faith in any Imperial Government whether Liberal or Conservative, to assume that it will do its very best in the interests of the Colony, and if the interests of the Colony clash with foreign countries it will in a bona fide manner assert the rights of the Colony. So we believe, until the contrary appears, and, in our opinion, so far it has not appeared."

A PLEA FOR AMERICA.

"Now, the Americans in this case were not the first offenders. They would not have set up these claims under the Treaty, which are ostensibly the cause of the trouble, if Sir Robert Bond had not interfered with the herring business; in other words, if the American fishermen had been allowed to continue to buy our herring. The Bait Act was applied only this year. The Premier's first weapon was the Foreign Fishing Vessels Act, which prohibited our fishermen from being engaged by Americans to fish for them. The first piece of legislation being found insufficient, he has resorted to the Bait Act, which, however, he can use only against our own fishermen, as the Americans would dispute the jurisdiction of our Courts."

ANOTHER MISSTATEMENT.

"There is another misstatement which has found currency. It is that the Supreme Court of the Colony has decided against the Imperial Government on the question of the *modus vivendi*. That statement is entirely untrue. The *modus vivendi* was not brought before the Court at all, although, if it had been pleaded, I do not know what decision would have been given. The point at issue could have been tried against any fisherman in any part of the Colony, whether he was on board an American vessel or not. The exact point was upon the construction of our own Statute, and the men were sentenced for an act which has never been treated by any Government or prosecutor as an offence. It was simply a question of putting herring on board without a licence. It is entirely incorrect to say that the Americans made this a test case or that they defended the prisoners.

"Canada," concluded Sir James, "is against this policy, for the simple reason that it is opposed to Canadian interests, as reciprocity with the United States would be injurious to Canadian trade. The policy of Sir Robert Bond is aimed over the heads of the United States at Canada. In the event of reciprocity Newfoundland would have a preference over Canada in American markets, and the Americans would be able to drive out Canadian agricultural produce from the Newfoundland markets. But surely this is a mistaken policy—at least from the standpoint of those who desire to promote harmonious relations between Newfoundland and Canada."

[Sir James Winter's opinion that it is "another misstatement" to say that the Supreme Court of Newfoundland decided against the Imperial Government on the question of the *modus vivendi* has to be reconciled with the following passage of Sir Robert Bond's speech at the Imperial Conference: "With the validity of the *modus vivendi* of 1906 I do not propose to deal. Suffice it to say that the Supreme Court of Newfoundland has decided that it could not override local statutes as intended."]

Extract from the St. John's, Newfoundland "Daily News", of September 25, 1907.

PLEA FOR THE "STATUS QUO ANTE."

On the first page appears a telegraphic report of a monster mass meeting held in the heart of the Herring Fishery District.

In substance, it is an earnest appeal for a reversion to the status quo ante, and a common sense and dispassionate presentation of the existing state of affairs.

The names mentioned are a sufficient guarantee of the wholly unpartisan nature of the proceedings. The cry comes from the people, irrespective of party affiliations; it is "*vox populi*," the petition of the people who have suffered, and are suffering unnecessarily.

All Newfoundland approves of a sane and dignified claim to our God-given heritage, the *Inshore Fisheries* of this Island; nor does it appear that this claim is seriously disputed.

The Coast Fisheries are subject to Treaty rights, and all points at issue have been referred to The Hague Tribunal; according to the Government organs, at Premier Bond's suggestion.

Pending a final and authoritative decision, it is urged that all restrictions be removed, and that the fishermen and fish dealers on the West Coast be not interfered with in their conduct of the fishery.

The two main grievances are the threats of fine and imprisonment for carrying out the terms of a *Modus Vivendi*, which those interested hardly approve of, and those not interested care very little about; and the clause, which compels the Americans, if they ship our fishermen, to ship them outside the three-mile limit.

This clause is one which Americans and Newfoundlanders alike strongly object to; the Americans because of the unnecessary expense and trouble, the Newfoundlanders because of the interference with their rights as men, and especially on account of the danger attaching to it.

It is not a matter of rowing three miles in a summer sea, but of battling the wind and waves, in storm swept waters, at the risk of life and limb, and no justifiable cause.

Last season at least one serious accident was narrowly averted through this harsh and cruel clause, insisted upon by a "paternal" government. Who shall say when danger will become disaster, and suffering be followed by death?

If one fisherman be injured or one life be lost by the inhuman attempt to force our fishermen to incur these unnecessary dangers, not all the water in the world will wash the Premier and his follow-

ers clean of the responsibility. These men will have been as much assaulted or murdered, as if slashed with knives or killed with bullets.

It is to be hoped that the Government, that is to say Sir Robert Bond, will hearken to the dignified prayer of our hardy Herring fishers, and make their lives a little easier and their risks less hazardous. If he refuses, on him the awful responsibility must rest.

In connection with the whole vexed question the accompanying extract from the New York Times makes instructive reading:

"The singular thing about the present situation is that as individuals both Americans and Newfoundlanders are eager to accommodate each other. It is mainly the governments which are contending, and they contend from stubbornness regarding their duties as trustees for the subjects of their respective nations. The Newfoundland fishermen are as eager to be hired as American skippers are to hire them. Sir Robert Bond forbids them to take acceptable wages, or to sell at good prices. The United States Government forbids Americans to buy the fish they want, although they are willing that the American skippers should make the bargains Sir Robert Bond forbids. He does not do this from any animosity, but because he wishes to put pressure upon the United States to ratify commercial reciprocity, which Americans want, but are not allowed to have, lest the removal of a single brick should imperil the entire tariff structure".

An unpatriotic craving for an unwanted reciprocity with an alien nation is the alpha and omega of the whole business,—and it is our fishermen, our fellow-countrymen, British subjects, one and all, who have to bear the brunt.

Editorial in the Plaindealer, pub. St. John's, Newfoundland.

OUR FIGHT WITH THE AMERICANS!

[January 27, 1909.]

Ever since our Government took up the gauntlet to fight the Americans on the fishery question, four years ago, we have been losing ground and getting the worst of it, but the knock out blow is evidently yet to come as the result of arbitration treaty terms about to be submitted at the Hague Tribunal. Hon. J. M. Kent is supposed to have gone to Washington to look out for our interests. We have a premonition that the people of Newfoundland, when all is said and done, will come out at the small end of the horn. This country was doing very well out of the American fishermen up to the time that the Premier took up the senseless policy of punishing the Americans for refusing to ratify the Bond-Hay treaty.

It was just as well to try to put out the sun by fanning it with a peacock's feather as to attempt to force the American Senate to fall in with the wishes of our Government by retaliatory measures. When our Government put the Foreign Fishing Vessels' Act into practice, in order to keep out the American fishermen, it was, as the result has shown, as foolish a piece of legislation as ever was enacted; and the end is not yet. The West Coast fishermen, from Bacalien to Bonne Bay, who were accustomed to supply the Americans with

herring, know better than anyone else, for they have good reasons to know, the loss that has resulted to the country by this suicidal policy. The stream of United States gold that annually flowed into the country having been suddenly cut off, a financial blight fell on the land and drove hundreds of our fishermen out of the country.

So much for the policy of revenge. If the American people were to retaliate on our fishermen in like manner how would it be? About 1,000 of our fishermen go to the New England States every year to engage in pogie and other fishing. Their wages, at an average of \$250 per man, would amount up to a quarter of a million dollars. Most of these men are engaged beforehand by American skippers in contravention of the United States Alien Labor Act, which prevents the importation of foreign fishermen. The United States Government could, if the law were strictly enforced, prevent many of these men from fishing in American waters.

What then is to be gained by us in this fight with the Americans? Have they not done more good than hurt to us in the past? They come right down to our doors and give employment to thousands of our people in the purchase of herring, caplin, squid, and ice. The West and South Coasts were prosperous while this trade was uninterrupted, and hundreds of thousands of dollars in gold were stowed away in reserve by our people every year. Bay of Islands witnessed a prosperity which will be difficult to pick up again, owing to the unfortunate interruption of last year, and the bad blood that was engendered by our Government attempting to prevent the Americans from getting herring, and our men from shipping on their vessels.

And what was the end of it all? Our Premier was forced to back down and revert to the *statu quo ante*, or, in other words, to allow the Americans to have their own way as in former years. A treaty that had almost been forgotten, that of 1818, was hunted up, and, exasperated by the conduct of our Government, the Americans contested for the strict letter of their rights under that treaty, which otherwise they probably would never have thought about. It further resulted in strengthening their position to make what, no doubt, will be a heavy claim for damages when the matter goes before the Hague Tribunal.

It will be the same old story—Newfoundland will continue to be the sport of historic misfortune. Going back to the subject of the herring: What could we do with them if the American fishermen did not come along and buy them? Why, we are not able to market our own codfish profitably now, not to speak of the herring fishery, which has never been generally taken up by our merchants. The wiser policy for us as a fishing country, would be to cultivate the good feeling and freindship of the American people, and this, we believe, would be the shortest road to such a treaty as would be as beneficial in its commercial results, for all intents and purposes, as the Bond-Hay Treaty.

We cannot reasonably expect the people of the States to eat our hard salt cod, such as we send to Spain, Portugal, and other countries of Europe; it is not the kind of prepared fish that they want. Now, it is different with our green fish; it is suitable for their markets, and if we get on amical trade terms with the ninety million people of the United States, it ought to require no extraordinary diplomatist to

make arrangements by which the United States would let all our green fish in duty free.

This would take all our bank, and all the early catch each season on the Western Shore. The output for the Mediterranean and Brazilian markets would be considerably relieved—say a third of our catch—and the price would go up and keep up accordingly. Let the American fishermen in, then, not only on the West Coast but all round the island, wherever people have herring, caplin, squid and ice to sell. Driving them out was a stupid mistake in the first place, and one, it is feared, that the whole country will have to pay for dearly, before Hon. Elihu Root is done with our Government. Should the colony at this particular juncture be compelled, by the terms of the international arbitration, to pay several hundred thousand dollars in compensation to the Americans, for interfering with their treaty rights, it will be doubly disastrous.

Goodness knows we have troubles enough already without this additional one cropping up. If the colony had gained anything, or had a prospect of gaining anything, by this fight against the Americans, it would be some kind of satisfaction, but we have made ourselves ridiculous in the eyes of the two nations concerned, and kept our own fishermen and business people from their rightful opportunities of earning money by the sale of herring, etc., to the New England fishermen, and, after doing all the mischief that we could, had to go back to the place from whence we began.

Patriotism is a grand thing, and we all admire the man who stands up for the rights of his country, but when it degenerates into suicidal folly, and brings nothing but disaster in its train, it needs to be called by some other name. Let us hope and pray for the sake of our common country that the affair will not turn as bad as the present circumstances indicate.

SPEECHES OF SIR ROBERT BOND, PREMIER OF NEWFOUNDLAND, AND REPLIES OF HONORABLE A. B. MORINE, OPPOSITION LEADER, AND M. P. CASHIN, M. H. A.

THE PREMIER'S SPEECH ON SECOND READING OF FOREIGN FISHING VESSELS BILL,
APRIL 7, 1905. [e]

The Right Honorable the PREMIER (Sir Robert Bond).—Mr. Speaker, when moving the first reading of this bill on Wednesday last, in reply to a question put by the leader of the opposition, I stated that the object of the measure is to inform foreign fishermen that they are no longer entitled to enter within the three-mile limit for any purpose whatever, except as provided by treaty with His Majesty's Government.

Under the foreign fishing vessels act of 1893, which this bill is intended to repeal, the governor in council was authorized to issue licenses to foreign fishing vessels, enabling them to enter any port on the coasts of this colony to purchase bait, ice, supplies, and outfits for the fishery and to ship crews.

Authority was conveyed to foreign fishing vessels to enter any port of entry for the purpose of applying for such license, and power was given to the governor in council to make rules and regulations respecting the terms and conditions under which such licenses should issue.

It is proposed to repeal the whole act of 1893, but certain sections of that act are embodied in this bill. For instance, sections 2 and 3 of that act are combined in section 1 of this bill, excepting that reference to the issue of licenses is omitted. Section 2 of this bill is practically the same as section 4 of the act of 1893. Section 3 is the same as section 5 of the old act, omitting reference to licenses. Section 4 of this bill is the same as section 6 of the 1893 act; section 5 is the same as section 7 of that act; section 6 is the same as section 8 of that act; section 7 is the same as section 9 of that act; and section 8 is the same as section 11 of the 1893 act. It may be contended that under acts which relate to our fisheries there is sufficient power to do all that is contemplated by this bill. My reply to that would be that the government is advised that the measure now before the House is desirable. It is desirable that the policy of the government in respect to foreign fishing vessels should be made perfectly clear and unmistakable.

That policy is not to grant licenses to such vessels, enabling them to enter any of the ports of this colony and purchase bait, ice, supplies, and outfits for the fishery, and to ship crews, under existing circumstances. This being the policy of the government, the retention on our statute book of the foreign fishing vessels act of 1893 would be misleading and might prove vexatious.

What are the existing circumstances that render it desirable and expedient that foreign fishing vessels should be precluded the privileges contemplated by the foreign fishing vessels act of 1893?

In the case of the French fishing vessels, the disadvantage at which our fishermen are placed by reason of the bounty system which the Government of France extends to her fishermen on our coasts, and which enables them to undersell us in foreign markets.

In the case of American fishermen, the almost prohibitive tax which Congress continues to impose upon all our fishery products that seek a market within the border of the United States, and the pronounced hostility of those fishermen, whose interests have been sustained by the supplies obtained from within our jurisdiction, to that measure of reciprocity that the Administration of their country has pronounced equitable and just.

And the further circumstance that warrants the present policy of the government in respect to all foreign fishing vessels is the shortage of bait supplies that has confronted our own fishermen during the past two years.

That that shortage is but of a temporary character we have every reason to believe. The herring, caplin, and squid, which comprise our bait fishes, are most erratic in their habits. Scientists tell us so, and experience has proved it. That those fish for some reason forsake long stretches of coast for a season, and, in some instances, for years, and then return again to their former habitat we have had demonstrated to us over and over again. But, while this is so, while we know that the embarrassment in respect to the scarcity of bait on certain sections of our coast is only temporary, it would be an act of madness on our part to continue to supply to foreigners what we require ourselves, unless we receive therefor a *quid pro quo*.

The generous treatment that we have been extending to American fishermen in this respect during the past fifteen years, while fully appreciated and respected by the Administration of the United States, is apparently not appreciated, and is certainly not respected, by the fishermen of that country, who have so largely benefited by it; and the best way to bring them to a realization of their position of dependence upon our bait supplies is to withhold those supplies. We have said to the fishermen of the United States, Provided our fishery products are admitted into your markets upon the same footing as your own, we will permit you to obtain from our supply all the bait fishes you require for the conduct of your fisheries. The answer we have received from those fishermen has been: "We don't thank you for bait. We pay for it, and hundreds of your people are dependent upon the dollars that we scatter in the purchase of that bait." They go further, and by misrepresentation succeed in influencing the Senate to thwart the Administration of their country in consummating a measure that, while dealing out justice to this country, would have been mutually advantageous.

Permit me to refer to proof of the correctness of my allegations.

On the 4th of December, 1902, Senator Lodge presented to the United States Senate certain papers and statistics in regard to Gloucester and New England fisheries. These papers were referred to the Committee on Foreign Relations to be printed, and I have been favored with a copy of the said papers and statistics that I now have before me.

The first paper is a letter addressed by Messrs. John Pew & Son, of Gloucester, to the Hon. Henry Cabot Lodge, under date 1st of December, 1902. In the main this deals with the mackerel fishery conducted from Gloucester, and the probable result of competition. Suffice it to say in reply thereto that Newfoundland has no mackerel fishery whatsoever. There was a time, forty or fifty years ago, when mackerel was as plentiful as caplin upon our shores, and people used them in the same manner. They were so plentiful that they were carted through the streets of this city to be used in the making of compost for manure by farmers, as caplin and squid are used to-day. However, during the last thirty-five or forty years they have almost, if not altogether, disappeared from our coasts, so that the statement of Messrs. Pew & Son, made for the purpose of influencing the United States Senate, is entirely misleading and incorrect, and has no bearing whatever upon the Newfoundland treaty. It is quite probable that no more than six or seven, if that number, of the Senators were cognizant of the fact that Newfoundland possessed no mackerel fishery, and the majority of the Senators were therefore deceived by the paper that was put before them, from which I have quoted.

Messrs. Pew & Sons then proceed to ask in their paper the question "What does Gloucester get by such a treaty?" and to answer it thus: "Only this one small thing, the withdrawal of the tonnage tax which Newfoundland imposes, namely, \$1.50 per net ton on American fishing vessels that seek Newfoundland ports at certain seasons of the year for the purpose of buying fresh bait. * * * Under the treaty of 1818, Article I, we understand that United States inhabitants have forever the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands; on the western and northern coasts of Newfoundland, from Cape Ray to Quirpon Islands; and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely. Therefore the liberty of buying bait free of tonnage tax already exists in this long stretch of seacoast, and the Hay-Bond Treaty is no benefit whatever."

This deliberate statement made to influence the Senate is fallacious and misleading.

In the first place the treaty that I had the honor of negotiating in 1902 means to the United States fishermen not only "the withdrawal of the tonnage tax," but the important privilege of purchasing bait fishes in any of the harbors of this colony, a privilege for the ten years' use of which, under the Washington Treaty, the Halifax Fishery Commission, which sat in 1877, awarded Newfoundland \$1,000,000 or an annual subvention of \$100,000 per annum. The treaty of 1818, to which Messrs. Pew & Son referred in their paper to the Senate, conveys no such privilege. Under that treaty they have no right whatever to buy bait on any part of the Newfoundland coast, and they have only been permitted to do so by virtue of the foreign fishing vessels act, which this bill now before the House proposes to repeal.

The treaty of 1902, now before the Senate of the United States, is intended to secure to American fishermen equal privileges with our own people in the winter herring fishery; and I repeat that the statement made by Messrs. Pew & Sons, that the Americans under the

treaty of 1818 have the right to buy or take these herring in the creeks and harbors on the southern coast of Newfoundland, between Cape Ray and Rameau Islands, and on the northern and western coast of Newfoundland between Cape Ray and Quirpon Islands, is incorrect and misleading; and I desire to emphasize the statement that, in my opinion, the fishermen of the United States of America have no right, under the treaty of 1818, either to take for themselves or to purchase bait fishes in the harbors, creeks, or coves between Cape Ray and Rameau Islands on the southern coast of Newfoundland, or in the harbors, creeks, or coves between Cape Ray and Quirpon Islands on the northern and western coast; and that the liberty extended to them under the treaty of 1818 to take fish in the harbors, bays, and creeks of this colony is limited to that portion of our dependency from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely. This is a point of vast importance to the people of this country. I believe I am correct in saying that it is the first time that this position has been taken, and, if I am correct in my interpretation of the treaty of 1818, the whole winter herring fishery of the west coast has been carried on for years by the Americans, simply at the sufferance of the government of this colony.

It is surprising that the Senate did not see the fallaciousness of the statement made by the Messrs. Pew in regard to the rights of American fishermen on the portion of the coast of this colony to which I have just referred, for the Hon. Dwight Foster, that eminent American lawyer who represented the United States of America at the Halifax Fishery Commission in 1877, declared, in his closing argument on behalf of the United States before that Commission, that "no rights to do anything upon the land are conferred upon citizens of the United States under the treaty of 1818. So far as the herring trade goes, we could not, if we were disposed to, carry it on successfully under the provisions of the treaty, for this herring trade is substantially a seining from the shore—a strand fishery, as it is called—and we have no right anywhere conferred by treaty to go ashore and seine herring. We have no right to go ashore for any purpose anywhere on the British territories, except to dry nets and cure fish."

I venture to go further than the learned counsel for the United States in his admission, and to express the opinion, after very careful consideration, that American fishermen not only have no right to land and seine herrings, but they have no right to enter into the harbors, creeks, or coves from Cape Ray to Rameau Islands, and from Cape Ray to Quirpon Islands, for the purpose of buying herrings or fishing for them.

Messrs. Pew & Son, in their paper, proceeded to state further that "in this stretch of coast (that is to say, between Cape Ray and Quirpon Islands) are situated Bay of Islands and Bonne Bay, where fifty or more of our New England fishing vessels go to engage in the winter herring fishery. Having herring come into the United States free of duty, as contemplated by the Bond-Hay Treaty, simply transfers this winter fishery over to the British flag." If the position that I have taken up in regard to this section of the coast of this colony is correct, the exclusive rights to the winter herring fishery are under the British flag to-day, and always have been so ever since the dominion of the British flag was first established in North America.

The other papers presented to the United States Senate by Senator Lodge on behalf of the New England fishermen scarcely merit criticism. They consist of extracts from newspapers published under a wrong impression prior to the publication of the 1902 treaty. It is perhaps worthy of notice, however, that the paper marked No. 2, signed by a Mr. Nickerson, alleges that "if the Hay-Bond Treaty is ratified one of the consequences that will ensue is that vessels from Nova Scotia will go to Newfoundland and register, and that thus the products of the Nova Scotia fisheries would find admission into the United States free, through the Newfoundland Convention."

The absurdity of this statement will be apparent on reference to the second and third articles of the Hay-Bond Treaty. Article II of that treaty stipulates that the fishery products to be admitted into the United States shall be "the products of the fisheries carried on by the fishermen of Newfoundland;" and Article III stipulates that "the officer of customs at the Newfoundland port where the vessel clears shall give to the master of the vessel a sworn certificate that the fish shipped were the products of the fisheries carried on by the fishermen of Newfoundland, which certificate shall be countersigned by the consul or consular agent of the United States."

At the time of the drawing up of the Hay-Bond Treaty I had in view the possibility which Mr. Nickerson regards as a certainty, and I caused the insertion of the articles to which I have referred in order to prevent any question arising in connection with Canadian fish, and a possibility of the evasion of the true intent and meaning of the treaty.

Another paper put in was signed by J. Donahue, F. E. Libby, and other New England fish dealers, who took up the position that our people were dependent upon the Americans coming to our shores to buy bait; that there was no danger of the withdrawal of bait privileges by the government of Newfoundland, inasmuch as a large number of the people of this colony were dependent upon the dollars that the Americans left here in return for the supply of bait fishes; and I have observed that a certain section of the press of New England has referred to the people of this colony as paupers, and to our fishery products as "pauper fish." The challenge has been thrown out by that press that the legislature of this colony dare not interfere or attempt to restrict our people in the supply of bait fishes to the American fishing fleet.

Another position which has been taken, not only by individual vessel owners of Gloucester, but also has been advocated by a large and influential section of the American press, is that the ratification of the Hay-Bond Treaty will cause the displacement of American fish in American markets; that it will mean the destruction of the fisheries of New England, which, it is contended, is the nursery of the American Navy. It would amuse the House if I were to lay before them the special paper which was forwarded by the fishing interests of New England to the United States Senate on this point. It would be amusing in view of the facts that are revealed by the registers of shipping and other public records. It is only necessary to have reference to those records to be convinced of the fact that out of 8,000 fishermen who man the fishing fleets of New England some 4,000 are Newfoundlanders, about 1,500 are of American birth, and the balance consists of Nova Scotians, New Brunswickers, Portu-

guese, and Scandinavians. We learn that in some instances whole crews of vessels sailing out of Gloucester are made up of Nova Scotians. The Gloucester News, of November 20, 1902, gave an interesting report of the three months' trip of the schooner *Aloha*, owned by Messrs. Cunningham & Thompson, in which it was stated that the "skipper was a native of West Bay, Cape Breton, while his fishery lads were the flower of Shelburne County, N. S."

During the recent war with Spain, the United States Government sent two man-of-war ships to Gloucester for recruiting purposes, and, although they remained there the whole summer, there was only an enlistment of about 300 men, the majority of whom were not American born. At the same time the commercial city of Boston enlisted from its workshops and factories more than 1,700 men for the same purpose.

It can readily be understood why it is that Gloucester and New England fishing interests object to the ratification of the Hay-Bond Convention, for at the present time they virtually have a monopoly of the frozen-herring industry. That industry has largely built up the fishery interests of New England. It is impossible for our people to compete with the Americans while they have to face an import duty of three-quarters of a cent per pound, which is equivalent to 25 per cent of the value of the article.

The expenses attending the prosecution of the frozen-herring trade by the Americans are insignificant, because their vessels are not under the necessity of going to the expense of bringing to Newfoundland either large crews or implements of trade.

Under a United States Treasury Department decision herring can be taken by engaging Newfoundland labor, and can be landed free of duty as if the catch had been taken by American crews. This virtually is an evasion of the law, and the matter has recently been freely agitated in the leading journals of New York and Boston, under the heading of "The Smuggling of Herring." As a matter of fact the frozen herring taken in American schooners to the United States can not be properly termed a product of the American fisheries. The American fishermen do not catch them; neither do they employ Newfoundland fishermen to catch them. They are caught by the people of this colony and sold to the American fishermen as an article of commerce, and are then, as has been termed by the American press, smuggled into the United States free of duty as a product of the American fisheries. One leading American journal has declared that the loss of revenue accruing to the United States Treasury during the year 1894-95, for duty on herring, amounted to \$84,000. In the year 1894 I was asked by the special agent of the United States Treasury to furnish statistics in respect of the conduct of the winter herring fishery in this colony by the Americans. I readily complied with the request, and it was upon the statistics that I gave them that the inquiry was based which led to the exposure in connection with the smuggling of herring into the United States in American vessels.

Under date 12th of March, 1894, I wrote the Treasury Department as follows, viz:

"With regard to the facts surrounding the prosecution of the so-called frozen-herring fishery, I have much pleasure in supplying the following information, which has been obtained from reliable sources:

"New England schooners visit the southern coast of Newfoundland during the winter months, from October to March, for the purpose of obtaining frozen herring. As you correctly observe, 'these vessels carry a small complement of men;' sometimes they carry a seine and seine boat, but this is the exception; in fact, it is but seldom that they have either. The bulk of herring obtained by them is purchased from Newfoundlanders in a frozen state, for cash; a limited quantity by barter, the commodities supplied being for the most part oil clothes, rubber boots, cheap ready-made goods, flour, sugar, and salt beef. On these articles duty is usually paid.

"I am informed, however, by the receiver-general, that there have been instances of attempts to evade the payment of customs duties, and he is of opinion that smuggling is still carried on, notwithstanding the great care taken to protect the revenue. It seems that a plea is made that 'owing to the nature of the voyage an extra allowance of oil clothes, rubber boots, flannels, ship's stores (including spirits), is made the crew and ship,' and there is grave suspicion that this surplus stock is bartered for herring without duty being paid on it. The price paid for the herring varies from 25 cents per basket to 40 cents per pasket, and depends on the catch. As a rule, the fish is frozen on shore by Newfoundlanders; in some instances it is caught, frozen, and held in store awaiting the arrival of American vessels, when it is sold to the highest bidder for cash. In no case is gear supplied to Newfoundlanders to take fish, except by actual sale of the article, *i. e.*, herring nets or secondhand mackerel seines, the latter of which are too much worn to be of use for the purpose for which they were originally intended. Newfoundlanders are sometimes engaged by American skippers to assist as stevedores, but never for the purpose of catching herring. There is one case on record in which natives of this colony were hired to take fish out of a seine. It occurred in St. Mary's Bay in the spring of 1893. One Solomon Jacobs, master of the schooner *Ethel B. Jacobs*, shot his seine in Newfoundland waters; a large haul was made, and Newfoundlanders were hired to take the fish out and place it on board the schooner.

"To my general statement, made above, to the effect that 'as a rule the fish is frozen on shore,' there is one exception. Occasionally the poorer class of fishermen who require an immediate supply of provisions bring their unfrozen fish alongside and barter them. These herring are subsequently frozen on scaffolds on board, and, for the most part, by natives hired for that purpose.

"To sum up: Herring is never taken by Americans themselves. They are purchased in exchange for cash, and in a lesser degree for merchandise, from Newfoundlanders, who catch and freeze them. Newfoundlanders are never hired to catch herring for the Americans.

"Care must be taken to distinguish between United States vessels visiting this coast for the purpose of purchasing bait, supplies, etc., for the codfishery, in fact those making Newfoundland ports a base from which to carry on fishing operations, and those who engage in the frozen-herring trade. To the former licenses (copy of which is inclosed) are issued, for which \$1.50 per ton is charged; to the latter no charge is made, except the usual ones, equally chargeable to Newfoundlanders, of light and customs dues."

Turning to another phase of the question:

In dealing with this bill it may not be disadvantageous to give a brief *résumé* of the history of the fisheries question as it relates to the intercourse between the fishermen of the United States of America and those of this colony.

Before the American Revolution the inhabitants of all the British colonies in North America possessed as a common right the right of fishing on all the coasts of what was then British North America, and these rights were, in the broadest sense, prescriptive and accustomed rights of property. At the end of the Revolution, and by the treaty of peace signed in 1783, the boundaries between the possessions of the two powers—that is to say, the United States and Great Britain—were adjusted by Article III of that treaty, which read as follows:

“Agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish, and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of His Britannic Majesty’s dominions in America.”

This was a grant or recognition of a right agreed upon for a consideration, viz, the adjustment of the boundaries and other engagements into which the United States by that treaty entered.

For our purposes it is unnecessary to deal with the other articles of that treaty.

From 1783 until the war between Great Britain and the United States in 1812 citizens of the United States continued to enjoy the ancient rights belonging to them as subjects of Great Britain before the Revolution, and reserved to them as citizens of the United States, to the extent outlined in the article of the treaty of 1783, to which I have referred. Between those dates other subjects of difference and negotiation, apart from the fisheries, arose between the two nations, which were disposed of by the treaties of 1794 and 1802, but the fishery provisions of 1783 continued down to the period of the outbreak of war in 1812.

At the close of that war a treaty of peace was concluded on the 24th of December, 1814, which provided—

(1) For the restoration to each party of all countries, territories, etc., taken by either party during the war, without delay, save some questions of islands in the Bay of Passamaquoddy;

(2) For disposition of prizes and prisoners of war; and

(3) For questions of boundary and dominion regarding certain islands and for the settlement of the northeastern boundary, and also for the northwestern boundary, but it made no reference whatever to any question touching the fisheries referred to in the treaty of 1783.

On the 3d of July, 1815, Great Britain entered into a commercial treaty with the United States, which provided for reciprocal liberty of commerce between all the territories of Great Britain in Europe and the territories of the United States, but made no stipulation as regards commercial intercourse between British dominions in North America and the United States.

After the conclusion of the treaty following the war of 1812, viz, that of the 24th of December, 1814, there being then no treaty obligations or reciprocal laws in force between, or in, either of the countries respecting commercial intercourse, the British Government contended that the fishing rights recognized and secured to the citizens of the United States by the treaty of 1783 had become abrogated in consequence of the war of 1812, on the principle of war annulling all unexecuted engagements between two belligerents. The fishing rights conveyed to the United States of America by the treaty of 1783 having been annulled by the war of 1812, the citizens of the United States no longer had the right to fish in any of the North American waters. This exclusion continued until the conclusion of the treaty of the 20th October, 1818, which treaty remains in force to-day, and embodies the whole of the fishing rights or privileges to which United States citizens are entitled in the waters that wash the coasts of this colony.

Article I of that treaty contains a recital of the fishing privileges in British North American waters conveyed to the United States by the Imperial Government. That article reads as follows:

"Whereas differences have arisen respecting the liberty, claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands; on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company: And that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry and cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounces forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. *But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The treaty limited to a territorial extent the fishing rights of the people of the United States, which they had enjoyed as British subjects, and which had been recognized and continued under the treaty of peace of 1783 and down to the year 1812.

It provided for the continuance of the ancient rights of fishing on certain parts of the coast of this colony and of His Britannic Majesty's other dominions in America. It also provided for a renunciation by the United States of pre-existing rights to take fish within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in British North America not included within the limits set forth in the article which I have read, that renunciation being subject, however, to the proviso that "American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The House will not fail to observe that the ancient right of fishing enjoyed by the fishermen of the United States, in common with the subjects of Great Britain, was continued in force by the treaty of 1818, in the first place along a certain portion of the coast of Newfoundland, viz: On the southern coast extending from Cape Ray to Rameau Islands, and on the western and northern coast from Cape Ray to Quirpon Islands; and, in the second place, along the coasts, bays, harbors, and creeks of the Labrador coast, from Mount Joly on the southern coast of Labrador to and through the Straits of Belle Isle, and thence northwardly indefinitely; and that the renunciation on the part of the United States to fish on other coasts of the island, and in the bays, harbors, and creeks thereof, is perfectly clear and emphatic. The treaty contained no provision as respects the exercise of what may be termed "commercial rights" by the American fishing or other vessels in the waters of this colony, and the right remained, and still remains, of the government of this colony to exclude American fishing vessels from all other waters or ports within the jurisdiction of the colony, subject, of course, to the limitation of the general law which applies to all civilized communities with respect to vessels under circumstances requiring the assistance of humanity.

It was not till the year 1830 that a reciprocal arrangement was entered into between the Government of Great Britain and that of the United States for what might be properly termed "commercial" relations, the act of Congress of May 29, 1830, providing for the opening of all American ports to certain British colonial vessels on a mutual opening of British colonial ports to American vessels, and a proclamation dated the 5th of October, 1830, giving effect to it on the part of Great Britain.

This arrangement would appear to have resulted in acts of aggression on the part of American subjects, and to a violation of the treaty obligations of 1818; for we find that in the year 1836 the government of this colony passed a bill, entitled "An act to prevent the encroachment of aliens on the fisheries of this colony, and for the further protection of the said fisheries;" that, in the same year, the Province of Nova Scotia passed laws in respect to the seizure of American fishing vessels for trading and fishing within the three-mile limit; and that,

in the year 1838, the said Province of Nova Scotia complained by address to the Queen of such aggressions and asked for naval force to prevent them. That force was supplied by the British Government, and seizures of American fishing vessels became common.

Down through the years until 1854 the same conditions applied, when, on the 5th of June, 1854, a comprehensive reciprocal trade treaty was entered into between His Majesty's Government and that of the United States, under which Americans were granted the right to fish within the limits prohibited by the treaty of 1818, under certain restrictions. That treaty terminated in the winter of 1864 by a vote of the Congress of the United States.

Between 1864 and 1871 the policy of issuing licenses to American fishermen to fish in the waters from which they were excluded for fishing purposes by the treaty of 1818 was adopted by the Canadian government, and, during the year 1866, 354 licenses were issued by that government at the rate of 50 cents per ton. The next year the license fee was increased to \$1 per ton, and the number of licenses issued amounted to 281. In 1868 and 1869 the license fee was doubled to \$2 per ton, and, in the years 1868 and 1869, 56 and 25 licenses respectively were taken out. The Canadian government then changed its policy and enacted exclusive laws against American fishermen, forcing them to keep without the three-mile limit.

In the year 1871 another reciprocal trade treaty was entered into between His Majesty's Government and that of the United States, which provided that, for a period of ten years, fishermen of the United States should have, in addition to their rights under the treaty of 1818, the privilege of inshore fishing in the waters of British North America under certain limitations. In return for that privilege it was provided that the fishery products of this colony and of the neighboring Dominion were to have free entry into the markets of the United States. On the 1st of July, 1885, that treaty was terminated by the Congress of the United States, and the fishing rights of United States citizens reverted back to those outlined in the treaty of 1818.

In the year 1888 an attempt was made by His Majesty's Government to negotiate another reciprocity treaty with the United States of America on behalf of the Dominion of Canada and this colony. Those negotiations resulted in what is known as the Bayard-Chamberlain Treaty, which was signed on the 5th of February, 1888, but which was subsequently rejected by the Senate of the United States, and was never ratified. This treaty was intended to convey to United States fishermen the privilege of entering the ports, bays, and harbors of this colony, free of charge, for the following purposes:

1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits;

2. Transshipment of catch, for transport by any means of conveyance;

3. Shipping of crews, in return for the free entry into the United States of fish oil, whale oil, seal oil, and fish of all kinds (except fish preserved in oil) being the produce of fisheries carried on by the fishermen of this colony, including Labrador.

In the year 1899 the government of this colony approached His Majesty's Government with a view to negotiations being opened with

the United States Government for a measure of reciprocal trade between this colony and the United States.

In the following year it was my privilege to be a delegate to His Majesty's Government, with Sir William Whiteway and the late Mr. Harvey, on the French Shore question, and the opportunity was then availed of to press upon His Majesty's Government the views of the then government of the colony in relation to the desirability of the government's being granted an opportunity to try and bring about a trade convention with the United States on its own behalf, and as distinct from the Dominion of Canada. It was impressed upon His Majesty's Government that the interests of this colony and those of the Canadian Dominion were not identical, and that there were questions operating as between the Dominion of Canada and the United States in which this colony had no concern, and which effectively barred the possibility of successful reciprocal negotiations.

His Majesty's Government, recognizing the force of the position that was set forth, granted permission to the government of Newfoundland to make the attempt on its own behalf, and I was authorized to proceed to the United States of America to assist Lord Pauncefote in negotiating a trade convention. The result of my labors was entirely successful so far as the making of a treaty was concerned. An agreement was arrived at satisfactory to the government of this colony as well as to the Government of the United States, which has passed into history as the Bond-Blaine Convention.

That convention was upon the lines of the 1888 treaty. It proposed to convey to American fishermen the rights intended to be conveyed by the Bayard-Chamberlain Treaty, in exchange for the free admission of our fishery products and crude copper ores, the product of Newfoundland mines, into the markets of the United States. That convention never was submitted for ratification, being held in abeyance by His Majesty's Government out of deference to the wishes of the Dominion of Canada.

Into the motives that prompted the action of the Dominion of Canada and the injustice with which this colony was treated by His Majesty's Government in that connection I do not propose to enter, as the House is only concerned at the present time with a history of the treaties that have been made or attempted to have been made from time to time with the United States of America with respect to the fisheries, and not with the merits of the various proposals.

The convention of 1890 having failed for the reasons that I have mentioned, in the year 1898 the then government of the colony united with the government of the Dominion of Canada and His Majesty's Government in an attempt to bring about a treaty upon the lines of the Bayard-Chamberlain Treaty of ten years previous. The negotiators met, and for some weeks the attempt to arrive at an arrangement satisfactory to all parties was continued, but these negotiations also fell through.

In the year 1902, when in London in connection with the colonial conference, I availed of the opportunity to press the claims of this colony for separate negotiations with the United States a second time upon the attention of the Colonial Office, and succeeded in obtaining permission from His Majesty's Government to proceed to Washington, and was given authority to reopen negotiations with the United States Government for a trade treaty between this colony and the

United States. I was again successful in my negotiations, and a convention was concluded which has become familiar as the Hay-Bond Treaty. That treaty was upon the lines of that of 1890. With its merits I do not propose to deal at this time, as it does not enter into the question before us; suffice it to say that that treaty has been before the United States Senate for the last three years, and is still before that Senate, and that it has been blocked in its passage by the immediate action of the fishing interests of Gloucester through their representative in the Senate, and it is the present condition of things as regards that treaty that in part has necessitated the bill that I have introduced before the House. Since 1890, when our first convention was negotiated, American fishermen have been admitted to one of the principal privileges that it was intended should be conveyed under that convention, viz, that of free access to the waters and harbors of this colony for a supply of bait fishes. That privilege has been continued during the last fifteen years, because this colony had reason to believe that, when His Majesty's Government set aside the objections of the Canadian Dominion and signified its willingness to assent to a trade convention that would be satisfactory to this colony, that then the United States Senate would readily give its approval to a measure of reciprocal trade that has been made with the endorsements of J. G. Blaine and Col. John Hay, two of the most eminent and patriotic men that have ever held positions of power in a great Republic.

As I observed a day or two ago, the position as regards the negotiations of treaties in the United States is entirely different from that which appertains in any other part of the world. The practice of other countries when a treaty is negotiated by the government is that it is not open to amendment, and if it is rejected by the legislature it would necessarily result in the resignation of the government and a change of administration. In the United States of America the case is entirely different, for when its Government makes a treaty it is recognized that such treaty is liable to be thrown out or entirely altered by the Senate. The law of the United States—that is to say, the tariff act of 1897—authorizes the President of the United States to negotiate reciprocity treaties, provided that the reduction of duties made in same shall not exceed 20 per cent. Under and by virtue of that mandative law the Administration of the United States has negotiated treaties with a number of countries; for instance, since 1899, with Barbados, British Guiana, Turks or Caicos Islands, Jamaica, Bermuda, Argentina, the French Republic, and this colony, all of which are in exactly the same position, viz, are hung up in the United States Senate; in other words, the Senate has pigeonholed the entire list, thereby setting aside the policy asserted in the national platform and embodied in the tariff law.

From the movement that is taking place in the commercial centers of the United States it is evident that it is being recognized that a procedure which brings about such results is defective, and exhibits the Government of the United States as powerless to give expression to the nation's policy and intention.

I have said that the present action in respect to our relations with the United States has been brought about in part by the action of the fishery interests of Gloucester, through the medium of those who, while prepared to accept the privileges freely and generously extended to them during the last fifteen years, are not prepared to

admit the correctness of the principle, approved by the United States Administration, that the extension of such privileges entitle this colony to that measure of reciprocity provided for in the treaty now before the Senate. It would seem that the gratuitous extension of those privileges by the government of this colony over so long a period has given the impression to the people of the fishing settlement of Gloucester that the few thousand dollars left by them in this colony in the purchase of bait fishes is so important a consideration to the people of this colony that no action is likely to be taken to prevent a discontinuance of those privileges. I have already shown by extracts from papers presented to the Senate of the United States from Gloucester, and from the report of the utterances of some of her representative men, the correctness of our conclusion.

In conclusion I desire to make clear to this House, and to all those outside of the House who are interested in the question under consideration, what is the attitude of the government.

This must not be regarded in the nature of a threat, as "a declaration of war," as the leader of the opposition has asserted, or as an attempt to strike a blow at the fishery interests of the New England States; but it is, I submit, a wise measure, conceived in the interests of the people of this colony, and calculated only to command the respect of our friends in the great American Republic.

For fifteen years, by a free and generous policy toward our fisher friends of the New England States, we have endeavored to show them that in our desire to secure a measure of reciprocal trade with their country we intend them no injury whatever; on the contrary, we desire to compete with them on equal terms for the enormous market that the 85 millions of people in the United States offers for fishery products. In 1890 we said to the people of the United States, Remove the tariff bar that shuts our fishery products out of your markets, and we will grant you all the supplies that you require at our hands to make your fishing a success. The offer still holds good. For the reason that I have explained, the past fifteen years the fishermen of the United States have received those supplies without the tariff barrier to the admission of our fishery products into the United States being removed by act of Congress, but we find the very men to whom we have extended such generous treatment are precisely those who have worked most strenuously to injure us in our trade relations with their country. We now propose to convince those men that the hands that have bestowed the privileges they have enjoyed have the power to withdraw those privileges. In doing this we simply rise to the full dignity of matter-of-fact statesmen. With the Administration of the United States we have no shadow of a cause for complaint. They have treated us with the greatest courtesy whenever we have approached them, and have manifested both a friendly and just attitude toward this colony. It is not the fault of the Administration at Washington that we are where we are to-day in this matter; the fault lies solely at the door of those who, for petty personal interests, have misrepresented facts, and, by so doing, have deceived those who represent them in the Senate of their country. It would ill become us, a little colony of a quarter of a million people, to throw down the gage of battle to a great nation of eighty-odd millions. We should merely make ourselves the laughing stock of the world. But, by standing upon our rights and exercising such powers as we possess in defense

of those rights, we challenge the commendation and respect of all those within this colony and beyond its borders whose judgment is influenced by considerations of justice and patriotism. I beg to move the second reading of the bill.

REPLY OF MR. MORINE TO PREMIER BOND'S SPEECH OF APRIL 7, 1905.[*]

FRIDAY, *April 7, 1905.*

HOUSE OF ASSEMBLY PROCEEDINGS.

Mr. MORINE moved that the bill be read that day six months. He thought that the legislature and the people of the country should have time to consider what was its real meaning in order to understand that it was essential that they should know the rights of the respective parties and their own rights on the one hand and those of the Americans on the other. Now, the Premier had stated that he had arrived at an interpretation of the treaty of 1818, which he, the Premier, had never before seen advanced, but which he was satisfied was a correct one, and for which he had stated some reasons. He, Mr. Morine, would say that however desirous the house might be to accept that interpretation, because it would very much narrow American rights and increase our own in our waters, he did not think that any lawyer would for a moment believe the Premier's point was well taken. The very fact that it had not been taken since 1818 was at once an argument and an answer. If there had been anything in that interpretation it would not have been left to the discovery of a layman in the year 1905, almost 100 years after the making of the treaty. And furthermore, the fact that this interpretation had not been acted on for upwards of one hundred years would be a sufficient answer. In fact, if there had been, originally, any meaning in such a petty interpretation of the words, the advantage had long been lost by the custom in usage of the two countries. The fact that such an interpretation had never been made before, but left until that date to be discovered by a layman, however eminent, would agree with the contention that there was nothing in it. The statesmen of the United States, Canada or Great Britain had never placed such an interpretation upon it. The interpretation of the Premier as to rights of the Americans was based on the fact that in one place the treaty referred to the rights on the Newfoundland coast between Ramea and Quirpon; and later on, when speaking of Labrador, it said not only coast, but further added the words bays, harbors and creeks, words which had not been put in with reference to Newfoundland. The Premier would argue, from the fact that the word coast if followed by the words bays, harbors and creeks, when referring to Labrador, the right to fish on the coast of Newfoundland, did not imply the right to use the bays, harbors and creeks of the said coast. Now, he, Mr. M., would like some seafaring man to show him the difference between the coast and bays; where the coast ended, and the bays commenced. What was the coast from Cape Race to Burin?

[* Extract from the St. John's (Newfoundland) Evening Telegram, April 11, 1905.]

Was it not Placentia Bay? And was not the Bay of Islands part of the West Coast? Further on the Premier would find, when reference was made to the right to cure or dry fish in certain bays, harbors and creeks and coasts, that it was especially recognized that the bays, harbors and creeks were part and parcel of the coast, and the right to fish upon the coast therefore included the right to fish in all the bays, harbors and creeks thereof, inasmuch as the coast was made up of bays, harbors and creeks. To argue that the Americans were to be deprived, under the treaty of 1818, of the right of fishing in any of the bays, harbors and creeks, of the coast, because only the coast itself was mentioned, was to argue falsely. The larger word included the smaller—the word coast included bays, harbors and creeks, and though, when referring to the Labrador coast, the words bays, harbors and creeks were used in addition, they might just as well have been left out—they were merely a lawyer-like repetition, having the same meaning. He was surprised that the Premier, after having made such a deep study of the case, and after having read that very excellent summary, quoting facts and dates, did not see the futility of his argument.

The rights referred to in the treaty of 1818 were rights which had remained from the time when the Americans were British subjects, and such rights would not be taken away by doubtful words. The meaning would have been clearly expressed. The parties would have asked what was the general meaning of these treaties. The general meaning had been the narrowing down of rights possessed by the Americans when they were British subjects; but such narrowing down would have to be done in plain language. The Premier had again and again, that evening, used words which described the effect of this treaty. He had said that the general purpose of the treaty was to limit the right, territorially, of taking fish. It was for the purpose of preventing their taking fish in certain waters, but they were allowed to fish in other waters. Originally they had had the right to fish in all waters; but under the treaty of 1818 they were prevented from fishing in certain waters, while still retaining the right in others. In the waters where they were allowed to fish, their rights were the same as they had always been. The right to fish on the coast implied essentially the right to fish in the bays, harbors and creeks, and that right was not to be taken from them because of the fact that in one section was found the word "coast," and in another place appeared "bays, harbors and creeks." That was too narrow an interpretation. He, Mr. M., could not see how the Premier, with such a history before him, and knowing the main object had been to limit fishing rights territorially, could have arrived at such an interpretation. There was another point which the Premier had alluded to that evening. He had said that, admitting that the Americans had the right to catch herring in Bay of Islands, admitting, for the sake of argument, that they had that right, they had no right to land upon the strand; and he had further stated that it was necessary for them to land, as they must use their nets from the land. He had been informed by a practical man in the house that such was not the case, as they could net the fish from their boats. The fact that the Premier said that it was necessary to land, was an answer to his argument. The right to do a thing drew to it the right to do everything necessary for its performance. The Americans had the right

to take herring and that right implied the right to land if they could not take them without landing. If, in other words, they could not exercise their conceded right without landing, then their conceded right implied the right to land and do all things necessary to carrying out that conceded right. Therefore, as the Americans must land in order to catch fish, they had the right to land, because they had the right to fish, and the right to fish included every necessary subordinate right. Why, the Premier had only to submit the treaty to any of the legal gentlemen surrounding him to find that that was so. Now, if they had the right to fish, they had also the right to land and haul their nets. The contention that they had not was not a correct interpretation in law, nor was it a correct interpretation in fact; and it would not be entertained by any legal man, or by the Premier if he had not been anxious to convince himself that he was right. Did the Premier think that the British government would allow him to deny the people of America this subsidiary right? Did he think the Americans would allow this country to refuse to permit them to land, and thus deny them the right to fish which they had under the treaty? Did he think that if it were made perfectly clear that not being allowed to land, deprived the Americans of the treaty right to catch herring, this interpretation would be permitted by the British government, and submitted to by the American government? Did he think that either of these governments would allow this colony to deny the Americans the right to fish by refusing them the privilege of landing on the strand. Now, it was very important to disabuse themselves of that argument that the Premier had advanced that this law did not interfere with the winter herring fishery. If it went into force it would destroy the winter herring fishery forever. They did worse, they handed it over to the Americans forever, never again to be engaged in by the people of this country. The Americans would be forced to catch the bait themselves. The government had laid an embargo on the people of Placentia Bay, the Bay of Islands and Fortune Bay, for the sale of herring for any price whatsoever, either for bait or for food. The government could not prevent the Americans from taking herring themselves. They would catch them, too, with the aid of Newfoundlanders. While that bill prevented American vessels from entering our ports for the purpose of engaging crews and thereby prevented our people from shipping as crews in our own ports; it was not possible to prevent Newfoundlanders taking train and steamer for Sydney and there shipping on American vessels. The west coast people would be driven out of the trade in which they now get a dollar and a quarter a barrel and were placed in the position of hewers of wood and drawers of water—hired men to American vessels. Today they caught the herring and sold them at their own price; tomorrow they would be hired men on American vessels catching the herring under the treaty of 1818 for any wages they can obtain.

Mr. SPEAKER resumed the chair at 8 p. m.

Mr. MORINE.—Before recess he was dealing with the argument of the Premier with respect to the interpretation of the treaty of 1818. He was pointing out that the interpretation he placed upon it could not be sustained. He assumed that he regards the sustaining of the interpretation of the treaty as of vital importance and one could see that it was, because if such interpretation could be sustained we could

in the first place prevent the Americans from carrying on the winter herring fishery, and, as they must have the herring, we could carry it on ourselves; and in the second place we could prevent them from taking them for bait as well as prevent them taking them for food. If the Premier's interpretation of the treaty could be sustained we could by this act prevent the Americans from obtaining bait and at the same time preserve the winter herring fishery for ourselves. He thought that if he could show that the interpretation placed upon the treaty was wrong, that if he could show that this act would not prevent the Americans from obtaining bait nor preserve the winter herring fishery for ourselves, perhaps the Premier would take time to consider before he passed an enactment of such vital importance. He thought his opinion as to the interpretation of the contract would be listened to by the house with some degree of respect. He asked the Premier to pause, and before acting on his interpretation of the treaty to submit the question to some competent legal tribunal. He had no hesitation in saying and in his mind there was no doubt that the Premier was absolutely wrong in his contention. The Premier's interpretation of the treaty was not only clearly wrong, but was so wrong that it flew in the face of all rules of legal interpretation. The Premier's argument depended upon two facts: First—That the winter herring fishery cannot be carried on at Bay of Islands or elsewhere in Newfoundland by the Americans, because although they can catch the herring, the right to land is not conveyed in the treaty by express words. It is necessary to land and haul seines, and, therefore, because they cannot land they cannot catch herring. Second—That the Americans had no right to catch fish in harbors, bays, creeks or inlets. In other words he narrowed the interpretation of the word "coast." On those two points hang the Premier's declaration that the Americans cannot carry on the winter herring fishery by virtue of their rights under the treaty of 1818. Dealing with the first point he said it was one of the cardinal principles of the law dealing with the interpretation of written documents that the grant of principal things carries the right to incidental things. In the short time at his disposal he had not had time to look up many authorities, but on going to his house he had picked up Broom's Legal Maxims, and these were almost the first words that met his eye: To put the meaning of this maxim in plainer words—if a man had the right to cross a field he had the right to climb a fence in order to do it. The right to fish carried the right to do all things necessary in order to fish. If you told a man he could fish and in order to fish it was necessary to land, the permission to fish included permission to land. Landing to haul nets was incidental to the right to fish, and yet the Premier said that although the Americans had the right to catch herring they had no right to land to haul their nets. Then again the Premier said that the Americans had only the right of fishing along the coast and not in the harbors, bays, creeks and inlets. According to the Premier's contention the coast only extended from headland to headland. Such contention was perfectly correct with regard to the question of three-mile limit; but with regard to this matter the contention was novel and absurd. A man who coasted went from bay to bay and from harbor to harbor. Did a coasting schooner only go from headland to headland? Did our coastline consist of straight lines drawn from headland to headland.

Coast certainly included the sinuosities of the larger bays. But he would further point out that from the very language of the treaty, in speaking of creeks, inlets, harbors and bays, it was clear that the parties to the treaty regarded such as part of the coast. It must be remembered that prior to this treaty the Americans had been British subjects, that the provisions of the treaty were simply restrictive, all that was not taken from them by the treaty was theirs as when they had been British subjects. This treaty did not alter their rights except in point of territory. There was nothing to affect the manner of fishing where they could fish, in the clause disclaiming their ancient rights on those parts of the coast not included between Ramea and Quirpon. He would ask, can any man doubt, can any man sanely doubt, these ancient rights would preclude their right to land in the bays and creeks; it was not arguable. If the Premier would take his, Mr. M.'s, advice, and get the opinion of competent men outside this house, after they had understood the facts and the law, perhaps the hon. Premier would abandon this bill and policy that he has embarked upon under a thorough misconception of the treaty. The Premier was not justified in the basis of his interpretation of the treaty as brought forward today, because he could not sustain such for one minute. If this bill became law, it would be fraught with serious consequences to winter herring fishery. In the first place it was intended to destroy the fishery with Americans to the fullest extent, permissible by law; that, he took it was to the fullest extent engaged in by the people of Newfoundland. There was no doubt in his mind that the house had jurisdiction over all parts of the coast of this colony, and the people, not alone from Ramea to Quirpon, but all ports; and this is true of our people on the treaty coast. There was no doubt he had the power to make the selling of herring unlawful to the people of Newfoundland; that is what the bill does, but it also goes further and makes the sale of herring in Placentia and Fortune Bays absolutely unlawful, and in these bays the Americans have no rights; consequently, if this act is enforced, the Americans cease to fish or purchase herring or bait in Placentia or Fortune Bays, and likewise in many other places on our coast. The bait-supplying business becomes unlawful, and on the treaty coast also unlawful, so far as our people are concerned who engage in it. There might be some reasons or grounds that would justify such a policy, if it was that our people needed the herring themselves, and our bait supply was so short, but what justification was there if it only transferred the business to some other people. If it was assumed that the sale of bait did not take place within the waters not on the treaty coast, what would be the effect? The Americans would come on the treaty coast, catch all kinds of bait without restriction or limit, either to time or uses they made of it, for the Americans had as much right to catch fish uninterruptedly upon that coast as we have. That being so, what would happen to the winter herring fishery at Bay of Islands? He knew people here with commercial interests in the fishery who advocated an export duty of $\frac{3}{4}$ per cent. per pound on herring shipped in American bottoms, as against those sent in local craft, but this bill goes further and says the Americans are not to purchase at all.

There would be only one result, the Americans would bring their own nets when they came on our coast, engage our men either at

Sydney, Louisburg, or other Canadian ports, or our men would go to Gloucester, or they might go to St. Pierre, or it might be they would take their boats and row outside the 3-mile limit; there was nothing to prevent our fishermen doing so, join the American ships there, and come back in our waters and fish for them. Then our Newfoundland fishermen would not be paid by the barrel as they are now, but by the day, the fisherman would be a tired man and once teach the Americans that game and no matter what you will do, they will keep it up. They will not thank you for it, if the Americans find they can catch herrings free. He considered that this bill amounted to nothing more than the creating of a passenger traffic for the Railway Co. and the Bruce, for it means the driving of our fishermen out of the country. This bill will drive them to Gloucester where they will hire themselves, and after two or three years would settle down there and become American citizens. The Premier said he thought there were 4,000 Newfoundlanders among the American fishing fleet. Well, if these can't hire here they will go to America and hire, would it not be far better for the colony for these fishermen to live here than to drive them to live in America. He considered this was an expatriation bill, one to drive the natives to a foreign land. It was an absurdity, for while the people of the southern shore could go to St. Pierre and join the American fishermen, by this law you won't let them join a foreign vessel at Burin or Lamaline; what utter absurdity. Look at this section: "If the master of the said vessel shall have engaged or attempted to engage any person to form part of the crew of the said vessel in any port or on any part of the coasts of this Island or has entered such waters for any purpose not permitted by treaty or convention for the time being in force, such vessel and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited." You don't say if he employs any Newfoundland fishermen he shall pay forfeit, for the government can't say so, and the only thing is done is to put fees and charges on our own people. It would be just like saying that no man should go to the seal fishery except he come to St. John's and ship, therefore perfectly absurd and only leaving it open to the men to go outside the three mile limit and ship or hire on board American vessels. Why, the whole of the southern shore could, if they wished, row off outside the three mile limit, hire to the Americans and then come back to their harbors and what could the government say or do? With respect to the herring fishery he had heard it said by some, it would be a good thing if it was destroyed. It might be bad for some people, but good for the country as a whole. He would not deny that if you could destroy the American herring fishery and keep the herring it might be good for the people of the colony as a whole, but by this bill that fishery would not be destroyed, it would go on, herring would be carried away, used for food and bait by the Americans, and all that will be accomplished is the destruction of the profit to a section of our own people, without any resulting good to the people as a whole. The individual must give way to the community, but one had no right to take away from the people of the West Coast the rights they enjoy and hand them over to the Americans, and that is what this bill will do. We were told the bill was to a large extent a copy of the Canadian act; and he Mr. M., just desired to point out what a dangerous thing it was to follow this

precedent. It might be good policy for the Canadians, but our circumstances were different, for the Americans had rights in our island that would destroy the effect of the bill, while in Canada they have no rights; and what may be naturally expected to happen is the Americans and French will come together, make full arrangements satisfactory to both, establish warehouses and cold storage at St. Pierre, obtain their bait and supplies by employing Newfoundland fishermen, and the policy of this bill will be the building up of St. Pierre and making it more American than before, and when St. Pierre becomes so fully Americanized her people would clamor for admittance to the American republic, and once let America take over St. Pierre and it would be a sore in the side of Newfoundland for ever and ever. He could not understand the force of the two alternative policies put forward by the Premier. The first pursued for years by the Premier and advocated by him that we had certain rights that the Americans needed to carry on their fishery, and we were willing to extend these rights as a matter of courtesy while we obtained free entry to their markets that would compensate us for the privileges granted. On the other hand, there was the policy of preventing the Americans getting bait, consequently they caught no fish, and their markets would be open to us; that if they put up the duty on codfish, the consumer would have to pay and we would not be affected or injured as they would have to purchase from us. Now, had the Premier come down and said that granting the Americans rights to catch herring and bait on the treaty coast, but that he now thought the time had come when Newfoundland must say we are going to keep our bait because we need it and will cut down the catch, and any excess you require must be bought from us. While this would be accompanied by great dangers and losses, it would yet be of good. But that is not the policy of this bill, but is the bad results of a bad policy with no advantages. It loses to us the winter herring fishery, and we get nothing back, and we enter upon a policy of retaliation that will only recoil on our own heads. A man that embarks a dollar on the strength of this bill may find in six months time it is back again to where it was originally, for the bill lacks the elements of permanency. The promise is held out to the Americans that if they change their minds and give us the Hay-Bond treaty we will change ours and give them bait. We give the Americans their choice; let them go on as long as they like but we are always ready to take them by the hand if they do as we want them to. He, Mr. M., likened the Premier to Bunyan's "Mr. Facing Both Ways," for the right hon. gentleman says in one breath, our bait was getting short and there was not enough for our own people, and that was the reason for this bill. In the same breath he says that it is only a temporary measure, and yet again he later says we will give back to the Americans what we now attempt to take away if they pass the Hay-Bond treaty. He, Premier, is facing three ways, not two. If our bait is scarce, where was the reason of giving it to Americans? If we need it don't give it to anyone. If we were short of bait, and could get no supply for ourselves, then we would have no fish and if we had no fish what was the good of the market. We wanted a market and yet we wanted the bait, but we would buy the market by giving away part of the bait which we ourselves must have to get the fish. The Premier had said that the

supply of bait was small and yet we were going to deprive ourselves of part of that small supply to secure a market. He, Mr. M., said that if the bait was the key to the fishery what did we want the American market free for. We should refuse them bait permanently and then they must buy our fish, but the proposition to supply them with bait to catch the fish so that they could supply their own market, was illogical. The position was not "out of our plenty we will give you some," but out of our scarcity, which he thought was utterly absurd. If the key was too large for the keyhole then he could understand taking advantage of it to make it workable, but if the key was already too small, taking from it would certainly not improve it. Were the men of this country, he Mr. M. said, going to agree with the Premier in this matter and when the bait is scarce give it to the enemy of the country. If the bait was scarce then that was reason enough for the permanency of this bill. If the scarcity was not permanent and the Premier said he was convinced that it was only temporary, then the scarcity was no argument, as we did not want to legislate every new year on the matter. The bait fish might be plentiful next year, but still that was no reason why it should not be a fixed measure. The position the Premier had adopted was a hostile one, and the previous friendly policy was endangered by the transitory state of the bill. Then what was to be the destiny of the herring fishery of the West Coast. This was to be totally destroyed, because he, the Premier, intimated that it is necessary to pass this bill so as to secure the passage at some time or other of the Bond-Hay treaty. Was not that a terrible price, to do away entirely with winter herring fishery and the sale of bait? All the loss would be ours and we could never retrace our steps. In the Legislature we might by repealing the act, but not as a people. And this the Premier had said was because of the non-ratification of the Bond-Hay treaty. In one breath he says that it is because the bait is scarce, that the present position is brought about, but he is forced to be honest in the main, and says the object is to teach the Americans the value of what we have to give, to punish them for not passing the treaty. Who doubted that such was not the reason? The argument was too flimsy not to be apparent. This community was too small, this house was too small not to know that. The Premier said we must preserve our bait fishes, but the real reason of the bill was to punish the American Senate for hanging up the Bond-Hay treaty. He thought such a position was unjust and undignified, and the Premier had given reasons for no other kind of policy. He, the Premier, says the President of the United States, the members of the Senate and the people of America, have heretofore treated us with conspicuous good faith; that the people were for the Bond-Hay treaty and commerce was for the Bond-Hay treaty, and the Senators did not know what they were doing. Now he passes a bill which is a dead blow at these people, because a few of the specially interested had hung up this treaty. How different was that policy from the one of former years. The Premier thought that this was the way to conquer the special interests, but he, Mr. M., thought that the surest way was not to antagonize them but to be patient and then success would come. This measure would not conquer the special interests, as such a position would antagonize all these interests and they would unite with the fishermen of the United States. You cannot conquer the Senate by

attacking the people. The motto of the United States is: "United we stand, divided we fall," hence when you make war on the special interests you have all the other interests against you. The American policy is a policy of special interests and they harmonize as a whole, making the policy of advantage to themselves; when, therefore, you make war on one you make war on the whole. The passage of this bill, he said, would close the last page in the negotiations for the Bond-Hay treaty and the treaty would never again come before the Senate. Gloucester would say: Look at this measure, look at this legislative declaration of war, the seizure and sale of our vessels. After the passing of such a measure there would never again be any hope for the Bond-Hay treaty. The Premier referred to Canada having no reciprocity with the United States, but he apparently did not know the reason. It was because the Legislature of Canada had shown antagonism against the United States. That was the reason Canada had no treaty with her. A bitter feeling had been stirred up in Canada and now the Premier proposed to embark on the same policy. He thought that if the Premier did not see the circumstances of the bill then there was no longer need for him, Mr. Morine, to be surprised at the bill himself. There was a vast difference in the embarkation on this policy and that of the policy previously adhered to, and if one wanted to comprehend it all that was necessary to do was to look at the terms of the bill itself. It was a denial of common rights, a declaration of war and a measure most unjust and unfair, that any nation might be expected to make a stand against. He was aware of how it was made. It was copied from a bill of some years ago drawn up under vastly different circumstances. That it was unjust was shown in the very first clause which read:—

1.—Any Justice of the Peace, Sub-Collector, Preventive Officers, Fishery Warden or Constable may go on board any foreign fishing vessel being within any port on the coasts of this Island or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbors in this Island and may bring such foreign vessels into port, may search her cargo and may examine the master upon oath touching the cargo and voyage; and the master or person in command shall answer truly such questions as shall be put to him under a penalty not exceeding \$500. And if such foreign fishing vessel has on board any herring, caplin, squid or other bait fishes, ice, lines, seines or other outfits or supplies for the fishery purchased within any port on the coasts of this Island or within the distance of three marine miles from any of the coasts, bays, creeks or harbors of this Island, or if the master of the said vessel shall have engaged or attempted to engage any person to form part of the crew of the said vessel in any port on any part of the coasts of this island or has entered such waters for any purpose not permitted by treaty or convention for the time being in force, such vessel and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited.

That is, any constable may board any American vessel and if bait was found aboard and she was within three miles of the coast, it must be proved that it was not purchased or taken on the coast failing, which, the ship might be confiscated. The measure, he said, was unjustifiable and would not be carried out, being a policy unfair between nations and men. He felt sure that the bill would not be

carried out because the British law would not permit it. The act of 1893 gave the right to issue licenses for bait to the Americans. It said all you have to do is get a license and pay \$1.50 per ton and we will not interfere, and this could be done without the danger of being brought before a magistrate. He believed the American government would not consent to this act. Our portion would be a mere squib, which would do all the harm and have no good effect. It was plainly a bill of retaliation, and not the adoption of a permanent policy. If he, the Premier, started in a more dignified way in the matter, if he had said our bait is our own, we want it, and we will not allow you to have it at all, the measure would be all right, and there would be a possibility of negotiating a treaty with the Americans. But they would not understand this measure. They would not appreciate the bargain or realize the generosity extended in the past. This measure only tried to force a treaty which generous treatment for the past fifteen years had failed to do. The Premier had admitted failure, and now he was going to deny privileges which had been extended gratis for 15 years, hoping that in the end they might induce the Americans to make a treaty. He did not at all consider it a dignified position. What had the American Legislature done? If they had been friendly, and had become unfriendly, then we were justified in changing our policy. But they had not. They were pursuing the same course they had always pursued. Theirs was the same policy. They did not give us any blow. They merely did not grant us a free market. But they don't grant free markets to any one else. They say we do what we always did, and what we have a right to do, because it is constitutional. The Premier knew that the Senate had only done what was within its constitution, and what was subject to the approval of its people. He knew that ratification was an essential part of the United States law, and he knew that the Senate was the treaty making power solely, therefore the Premier and the government had no reason to change their policy. They were merely punishing the Senate for doing what it had a perfect and legal right to do. The government was saying that "we," the Legislature of Newfoundland, will shake the United States Senate out of her boots for daring not to pass this treaty. This was not a dignified position of policy. The position we should occupy was this: "We want our bait and we will never sell it to you. We must do this to protect ourselves." This position would be perfectly dignified. He objected to the treaty because it was a measure of retaliation on a people who were friendly to the Empire, and never more friendly than now. Influencing our people against them could only inflame and excite them and make the latter position worse than the first. Because the Government wanted to hit, it wanted to put a sting in the blow, to sting the face of the American fishermen, and if the Premier did not do this he failed to do what he was trying to do. If we adopted the permanent policy they could not hold out, but must come to us for the fish to supply their markets; but this was a policy we dared not embark upon unless we wished the friendly spirit of the nation. He opposed it because the Premier did not ask the house to pass a permanent bill, but for the purpose of obtaining a ratification of the Bond-Hay Convention was prepared to pass this measure today and repeal it tomorrow. The Premier has said that that was the price of the treaty, and that the Americans could come and take bait as soon as

they passed that measure. Was the country prepared to pay that price for the Bond-Hay Convention? And not only did he object to it because it was not in any way a permanent policy, but he objected to it because he considered it to mean a destruction of the herring trade and several other trades of the country. Was the country ready to pay so dearly for a treaty it had never seen?

Rt. Hon. PREMIER.—The treaty was before the house.

Mr. MORINE.—The Bond-Blaine treaty was before the house, but not this one.

Rt. Hon. PREMIER.—Yes, it was.

Mr. MORINE.—The Bond-Hay treaty was not before the house completely. Certain amendments had been made of which the house knows nothing. The house had been expressly told that certain changes had been made, but these changes were not put before it. Now, what was given this colony for the price it was paying? In the first place the market of the United States was not worth the price. No treaty with the United States of the nature of reciprocity ever had good effects. There has already been more than one such treaty, but no good results flowed therefrom. The American market for fish was not worth anything. There had been a lot of bombast about the 80,000,000 people of the United States—supposed to be 80,000,000 fish eaters—to whom the fishermen of this country were going to sell their fish. But the practical men of Water street, the practical men in this house, the practical business men throughout the whole country, will tell you that that market is of no value to Newfoundland. What advantage to Newfoundland would the abrogation of the American duty on fish be? It would simply have the effect of reducing the price of fish to the American consumer. It would injure the American fishermen, but do the Newfoundland fishermen no good. Who supplied the American market at the present time? Not Newfoundland fishermen, not Canadian fishermen. The American market was supplied by the American fisherman himself. Under the Bond-Hay treaty you will have to supply the foreigner with bait freely. There would not even be a license fee, and the return given Newfoundland for that privilege was a market valueless to this country. He opposed the bill before the house for another reason also, and that was because it was illegal. It was provocative of litigation, not merely in its details, but essentially. To carry out the measure certain definite things had to be done, if they could be done. But they could not be done, because it was illegal to do them. They could not be done in this country because the treaty conditions of this colony were such as not to permit them. Just read the first section:

“Any justice of the peace, sub-collector, preventive officer, fishery warden or constable may go on aboard any foreign fishing vessel being within any port on the coasts of this Island or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbors in this Island and may bring such foreign fishing vessel into port, may search her cargo, and may examine the master upon oath touching the cargo and voyage.”

Do you think you will be allowed to do that? Do you think that the American people are going to allow you to treat a vessel of theirs lying in Bay of Islands, for instance, in that way? Do you think that the American people are going to permit a common

constable to go on board their vessel under such circumstances, take the vessel into port, search her cargo, and bring up the master of the vessel for examination on oath, when they are themselves acting under treaty rights, and have as much right to be in the harbor as Newfoundland vessels have to be there? And when you get them there what do you do with them? The section reads:

And if such foreign fishing vessel has on board any herring, caplin, squid or bait fishes, ice, lines, seines or other outfits or supplies for the fishery purchased within any port on the coast of this Island or within the distance of three marine miles from any of the coasts, bays, creeks or harbors of this Island, or if the master of the said vessel shall have engaged or attempted to engage any person to form part of the crew of the said vessel in any port or on any part of the coasts of this Island or has entered such waters for any purpose not permitted by treaty or convention for the time being in force, such vessel and the tackle, rigging, apparel, furniture, stores and cargo therefore shall be forfeited.

Then it provides that the presence of bait, &c., on board the schooner should be *prima facie* evidence of guilt. And by that means the burden of proving themselves not guilty was thrown upon the master of the schooner. That was an unwarranted reversal of common law rights. A reversal which might under special circumstances, be permitted in its application to a citizen, but never to a foreigner. Did the Hon. Premier think that would be allowed on any part of the treaty coast? That treaty allows them certain fishing rights along certain parts of the Newfoundland coasts. Did this house think that the Americans would permit these treaty rights to be interfered with? Such a law could be made applicable to the other shores of the Island, but the treaty coast cannot be in any way affected thereby, and even if done on our own coast not affected by treaty, it would only have the effect of antagonizing and embittering the American nation against us. It was for doing a similar thing on their own coast that Canada and the United States have been embroiled for years. Then there was section 7 as a saving clause. It reads as follows:

7. "Nothing in this Act shall affect the rights and privileges granted by treaty to the subjects of any state in amity with His Majesty."

What did that section mean? Does it mean that you cannot go on board the American vessel, in Bay of Islands or St. George's? Who, in this country, is competent to decide that question? Is the captain to be first arrested and then the question decided? That is what must be done. The act must affect treaty rights and privileges if any attempt whatever is made to carry it out. That section must mean that the act shall have no effect on the American vessels between Ramea and Quirpon. It would have the effect of driving all the American vessels within that treaty area to obtain from the shore what the French had partially failed to procure. And the American people would be successful, because of their greater enterprise, skill and funds. All the reasons which had been so ably and eloquently argued by the Premier against the bait act applied with ten times greater force in dealing with the Americans. The house well knew how the Rt. Hon. Premier thundered on that question, and how he convinced the people of this colony against the bait act. Ten

times over did these arguments apply to the bill then before the house. The Americans were a more skilful and preserving nation than the French. They were nearer to our shores, and were nearly related to the people of this country. All the sympathies which had gone out to the French would more than ten times over go out to the Americans. Their interests were far wider. It was absurd for the Americans to say that Newfoundland could not get along without American trade. Newfoundland could get along without it, and would if some return were provided in the place of it. But Newfoundland profits from that trade, and any attempt to do away with it for a temporary period is too great a price for this thing. He believed that the good of the few should be sacrificed for the good of the many, and he would not hesitate to see the herring fishery totally destroyed if adequate compensation came to the whole of the Newfoundland people for that destruction. He was prepared to see the bait and ice trade of some of the people of this island sacrificed if the whole country benefited thereby. But in the case then before the house the interests of the few were being sacrificed, but there was no adequate compensation for the many. This act would mean the destruction of the herring fishery. The same number of herring would be caught, but the profits would go to the Americans instead of the Newfoundlanders. It was unjust to the people of this colony that a permanent trade should be sacrificed for a policy which was not permanent, a policy which the Premier had stated was not intended to be permanent, and from which no permanent benefits could possibly flow. He consequently opposed the measure before the house in its entirety. Because it was a retaliatory measure it was unjustifiable; from it could come no good effect; it was not a permanent measure, and it was illegal, unenforceable, and based entirely upon a misconception of treaty rights.

THE PREMIER'S SPEECH ON MOVING THE HOUSE INTO COMMITTEE OF THE WHOLE ON THE BILL ENTITLED "AN ACT RESPECTING FOREIGN FISHING VESSELS," APRIL 12, 1905. [c]

Right Honorable the PREMIER (Sir Robert Bond).—In moving that this bill be now referred to a Committee of the Whole House, I desire to make a few observations in reply to the remarks of the honorable leader of the opposition when it was up for a second reading. In doing so I shall be as brief as possible and confine myself to the four principal points of the honorable gentleman's criticism.

They may be dealt with under the following heads, namely:

- (1) American rights of fishing under the 1818 treaty.
- (2) Their rights by custom.
- (3) The effect of the operation of this bill upon our own fishermen.
- (4) What is likely to result to the Americans by virtue of its enforcement.

I shall deal with his criticism in the order that I have named, and I do not think that I shall have very much difficulty in convincing the House that his premises were unsound and his logic seriously defective. The honorable gentleman may have succeeded in convincing himself as to the wisdom of his observations and of the correctness of

his conclusions, but I hardly imagine that he convinced the House or any member of it.

Now, as to the rights of American fishermen in the waters of this colony under the treaty of 1818:

Those rights, as I explained on Friday, are defined in article 1 of the treaty, and are as follows:

(1) To take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands.

(2) To take fish of every kind on the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands; and

(3) To take fish of every kind on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast.

Subject to these limitations, American fishermen have a right in common with British fishermen to prosecute their industry within those areas.

But this embraces the whole of their privileges in respect to the capture or taking of fish.

Every other right that they ever possessed they renounced under the said treaty, in the following emphatic language, namely:

"The United States hereby renounces forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included in the above limits."

Their renunciation contained but one qualification, and that was "that American fishermen shall be permitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever."

In dealing with the rights of American fishermen as thus defined, I ventured to take the position that those fishermen have no right to fish within any of the bays, creeks, or harbors on that stretch of coast between Cape Ray and Rameau Islands and Cape Ray and Quirpon Islands, and that their right to fish in bays, creeks, and harbors is confined and limited by the treaty of 1818 to that portion of coast from "Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along that coast."

To this position the leader of the opposition took strong objection, and the major portion of his remarks were in support of his objection.

The House was told that "no lawyer could place such a construction upon the treaty;" that "it would be unreasonable to suppose that nearly one hundred years could pass without the position having been discovered by the eminent lawyers of England, America, Canada, and of this colony, if that position was tenable;" that it was "an absurd position;" that if the Americans had the right to fish by treaty "they also had the right to do all things incident to the fishery," and that "if they could not fish without landing, they had a perfect right to land," that it was "a cardinal legal principle that a grant of a privilege carries with it all incidentals in order to fully possess and enjoy the privilege."

Now, sir, in reference to the assertion that "no lawyer could place such a construction upon the treaty," I would observe that lawyers, like doctors, differ in their opinions. It is their business apparently to differ. If they agreed in their construction of treaties and laws, then there would be no litigation, and their avocation and that of judges and juries would be gone. But not only do lawyers differ in their interpretation of treaties and laws, but judges do likewise, and hence it is that under our British Constitution another tribunal has been established, namely, the Privy Council, which is called upon to decide when judges differ. I am not a lawyer, I am sorry to say; I am only a humble layman; but it is just possible that I may have given more study to treaties that concern this colony and to the subject of international law than some who have qualified for the practice of that profession.

When my learned friend, the leader of the opposition, declared that "no lawyer would place such a construction" on the treaty of 1818 as that the American fishermen have no right to land on any portion of our coast to fish, he was setting up his opinion, not only against my humble view of the matter, but against that of one of the most eminent lawyers that the United States has produced, viz, the Hon. Dwight Foster, who, as I showed on Friday last, when addressing the Halifax Fishery Commission, in his closing argument on behalf of the United States, said: "No rights to do anything upon the land are conferred upon citizens of the United States under the treaty. So far as the herring trade goes, we could not, if we were disposed to, carry it on successfully under the provisions of the treaty, for this herring trade is substantially a seining from the shore—a strand fishery, as it is called—and we have no right anywhere conferred by the treaty to go ashore and seine herring. We have no right to go ashore for any purpose anywhere on the British territories, except to dry nets and cure fish." (Page 215, Record of Proceedings, Halifax Commission, 1877.) This is the opinion of a lawyer—an eminent lawyer; a lawyer charged by the United States Government with the defense of its rights and privileges under the treaty of 1818. It is only proper to assume that he would have placed the most favorable construction possible upon the treaty in the interest of his nation. He could not—he did not—attempt to contend that the right to fish along the coasts of this colony carried with it the "incidentals" to land and fish from the shore. He said frankly and honestly, American fishermen "have no right to go ashore for any purpose anywhere on British territories except to dry nets and cure fish." It will be observed, then, that I simply hold Americans to the position that they have defined themselves.

It has been left to the leader of the opposition in this House to set up a claim on behalf of the American people that their Government renounced eighty-seven years ago, and which one of its most eminent lawyers repudiated in 1877, when it was advanced on behalf of the United States before the Halifax Commission.

With respect to the further position that I set up, namely, that not only have the American fishermen no right to land upon any portion of our coast to fish, but that they have no right to enter any bay, creek, or harbor between Cape Ray and Rameau Islands and Cape Ray and Quirpon Islands to fish, the leader of the opposition said in the first place that my contention was absurd, as the word "coast"

meant not only from headland to headland, but the bays, coves, creeks, and harbors which form the sinuosities of the coast.

In reply to that observation I would say that the word "coast" in the treaty has been defined by His Majesty's Government to mean the very opposite to what the leader of the opposition has declared it to mean. In the report of the Committee on Foreign Relations, to which was referred in 1888 the message of the President of the United States concerning the interpretation of the treaty of the 20th October, 1818, I find the following: "The British contention has been that the word 'coasts' in the treaty relates only to the open seacoasts, and not to the coasts of bays, harbors, and creeks that are claimed and controlled by the provincial governments as territorial waters."

The "absurdity," then, of which I am accused by the leader of the opposition is based upon the construction given to the word "coast" in the treaty of 1818 by His Majesty's Government, who, of course, would be advised in the premises by the law officers of the Crown. My honorable friend, the leader of the opposition, will pardon me if I prefer to accept the opinion of the ablest lawyers in England to his on this matter.

But it was quite apparent that the leader of the opposition was not quite sure of his ground when he proceeded to define the meaning of the word "coast" in the treaty, for he subsequently dealt with what he termed "right by custom." If, he said, "the position of the premier be correct, then custom and practice would entitle the American fishermen to enter the creeks, coves, and harbors between Rameau Islands and Cape Ray and between Cape Ray and Quirpon Islands to fish."

While I do not concur in that doctrine, let us briefly examine what the custom has been, and as the leader of the opposition went back to what he termed the ancient customs, those which Americans enjoyed when British subjects and which were not renounced by the treaty of 1818, we will examine the records.

Before the war of independence in 1775, British-American colonists enjoyed equal privileges in the North American inshore fisheries, but after that war their privileges were curtailed, and the full extent of their privileges is set forth in the third article of the Treaty of Paris, of date 3d September, 1783, as follows:

"It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

It will be observed that the wording of this article is very carefully guarded, and that while it continued to the citizens of the United States the right to prosecute what may be termed deep-sea fisheries within certain areas, it conveyed them only the liberty to dry and cure fish upon certain defined portions of the British-American coasts. The fisheries continued to be regulated by this treaty until the war of 1812, by which the privileges extended to the United States under the Treaty of Paris were terminated.

In 1814 the Treaty of Ghent was signed, but contained no reference to the fisheries question. It appears, however, from the records, that the subject was discussed by the plenipotentiaries of the two powers, and that on the part of the British Government it was stated that "they did not intend to grant to the United States gratuitously the privileges formerly granted by treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries." It further appears that, immediately after the conclusion of the Treaty of Ghent, His Majesty's Government determined upon a most vigorous protection of our fishery rights, for, under date 17th of June, 1815, the following dispatch was written to the governor of this colony by Lord Bathurst, then Secretary of State for the Colonies:

"DOWNING STREET, 17 June, 1815.

"SIR: As the treaty of peace lately concluded with the United States contains no provisions with respect to the fisheries, which the subjects of the United States enjoyed under the III Article of peace of 1783, His Majesty's Government consider it not unnecessary that you should be informed as to the extent to which those privileges are affected by the omission of any stipulation in the present treaty, and of the line of conduct which it is in consequence advisable for you to adopt.

"You can not but be aware that the III Article of the treaty of peace, 1783, contained two distinct stipulations, the one recognizing the rights which the United States had to take fish upon the high seas, and the other granting to the United States the privilege of fishing within the British jurisdiction, and of using under certain conditions the shores and territories of His Majesty for purposes connected with the fishery; of these, the former being considered permanent, can not be altered or affected by any change of the relative situation of the two countries, but the other being a privilege derived from the treaty of 1783 alone, was, as to its duration, necessarily limited to the duration of the treaty itself. On the declaration of war by the American Government and the subsequent abrogation of the then existing treaties, the United States forfeited, with respect to the fisheries, those privileges which are purely conventional, and (as they have not been renewed by stipulation in the present treaty) the subjects of the United States can have no pretense to any right to fish within the British jurisdiction, or to use the British territory for purposes connected with the fishery.

"Such being the view taken of the question of the fisheries, as far as relates to the United States, I am commanded by His Royal Highness the Prince Regent to instruct you to abstain most carefully from any interference with the fishery, in which the subjects of the United

States may be engaged, either on the Grand Bank of Newfoundland, in the Gulf of St. Lawrence, or other places in the sea. At the same time you will prevent them, except under the circumstances herein-after mentioned, from using the British territory for purposes connected with the fishery, and will exclude their fishing vessels from the bays, harbors, rivers, creeks, and inlets of all His Majesty's possessions. In case, however, it should have happened that the fishermen of the United States, through ignorance of the circumstances which affects this question, should, previous to your arrival, have already commenced a fishery similar to that carried on by them previous to the late war, and should have occupied the British harbors, and formed establishments on the British territory, which could not be suddenly abandoned without very considerable loss, His Royal Highness the Prince Regent, willing to give every indulgence to the citizens of the United States which is compatible with His Majesty's rights, has commanded me to instruct you to abstain from molesting such fishermen, or impeding the progress of their fishing during the present year, unless they should, by attempts to carry on a contraband trade, render themselves unworthy of protection or indulgence; you will, however, not fail to communicate to them the tenor of the instructions which you have received, and the view which His Majesty's Government take of the question of the fishery, and you will, above all, be careful to explain to them that they are not, in any future season, to expect a continuance of the same indulgence.

"I have, etc.,

(Signed)

"BATHURST.

"Vice-Admiral Sir RICHARD G. KEATS."

The enforcement of these stringent instructions led to the negotiations that terminated in the treaty of 1818. This dispatch disposes of those "ancient privileges or customs" to which the leader of the opposition referred, and the only privileges or customs that we have to consider are those set forth in the treaty of 1818, or arising out of it.

The treaty stipulations seem perfectly clear, and we have only to consider whether any customs have grown up under it. So far as I have been able to discover from the public records this colony, with the approval of His Majesty's Government, has, saving only during the periods of reciprocity and during the past fifteen years, most vigorously maintained its fishery rights against the encroachments of American fishermen, and that it has not been the custom at any time for American fishermen to fish within the bays, creeks, coves, or harbors of the colony. When they have visited our harbors, bays, and coves for fish it has been with the permission of the government of this colony, granted under license. The contention of the leader of the opposition in respect to rights by custom therefore falls to the ground.

Now, then, as to the honorable gentleman's views as to the effect of the bill before the House upon our own fishermen. He said residents of Bay of Islands, Bay St. George, and Bonne Bay would go to Sydney, ship on American vessels, and become "hewers of wood and drawers of water" for men from another country; either this or the expatriation of our people would result, for they would be driven away from their homes to seek employment which would be denied

them in the land of their birth. I could not quite follow the reasoning of the leader of the opposition in this regard. If the Americans are excluded by legal process from entering those bays or ports, does it not follow that the whole trade in herrings, either frozen or pickled, would revert to the people of this colony? The demand for that fish must be met. If the United States fishermen can not supply the demand the people of this colony may. In the absence of herrings going in duty free, as they did at the present time in American bottoms by an evasion of the United States tariff law, the people of this colony could afford to enter into the industry and pay the duty of three-quarters of a cent per pound that is now levied by the American customs. Again, natives of this colony, who, as the leader of the opposition alleges, now go to Gloucester and obtain employment in the fishing schooners that sail from that place, would find employment here in the same trade, viz, that of conducting the frozen and pickled-herring trade between this colony and the neighboring Republic; in other words, they would pursue the employment under the British flag rather than under the Stars and Stripes. It is perfectly true that the Canadians have a herring fishery, but it is also true that their herring fishery does not amount to sufficient to supply their demands. It is indisputable that they have to come to our shores and obtain supplies of herring and other bait fishes to successfully conduct their fisheries. That being so, it can not be correctly alleged that by this bill the herring trade will be diverted from Newfoundland to Canada. The leader of the opposition has asked the question, "If it is possible for the people of this colony to engage successfully in the frozen-herring trade, why is it that they have not done so?" The answer is perfectly clear; because they have had to compete with the Americans who carried into the United States, duty free, whilst the people of this colony have had to face a duty of three-quarters of a cent per pound, or a tax equivalent to 25 per cent of the article. It will not be contended that the people of this colony are unable to compete with the fishermen of the United States or any other country upon equal terms. My memory as a member of this legislature goes back now for nearly a quarter of a century, and I do not remember that the position was ever before taken in this House that our fishermen could not compete with either the American or French fishermen on an equal footing. The object of every bill that has been introduced into this legislature in relation to foreign fishermen has been with the sole view to bring about an alteration in the foreign bounty system or the reduction of prohibitive duties. That was the object of the bait act. The contention of the introducers of that measure was that it was to be used as a lever for the purpose of bringing about the abolition of the bounty paid by the French Republic upon the fish caught by French fishermen upon our coasts. It has been asserted that the Canadians will come down here, take our herrings, and then dispose of them to the Americans. It is quite possible that the Canadians will come down here; they have come here up to the present time, and I do not hesitate to say that to a great extent they have thwarted us in carrying out the bait act against the fishermen of France. I have been advised by Inspector O'Reilly, of the fisheries department, that certain parties in Canso are, at the present time, preparing cold storage with a view to supplying both French and American fishermen with bait fishes obtained

on the west coast of this island under false pretenses, namely, as being required for food purposes and not for bait. Mr. O'Reilly has informed me that a Mr. Whitney, of Canso, had told him of his intention in this regard. I have only to say that if Canadians persist in violating the laws of this colony a remedy will have to be provided by this legislature. It may only be necessary for the government of this colony to bring the matter to the notice of the government of the Dominion. This I propose to do, but failing in an acquiescence on the part of that government in the reasonable demand that will be made in the premises, the legislature will be called upon to devise some means of preventing a violation of not only the spirit but also of the letter of the law.

I have reason to know that the great majority of the people of this colony are in favor of the restrictions that are about to be imposed by this bill, and, therefore, to suppose that any of these people will aid or abet the Americans in the herring industry is not to be anticipated. The people being in sympathy with this legislation, that is framed on purpose to protect them in their rights, are prepared to uphold the hands of the government and to assist them in making this act effective.

The honorable leader of the opposition stated that he would support this bill if it was a permanent measure, but as it was intended to be only temporary in its application he would not support it. The honorable gentleman is certainly illogical in this connection, for if the bill is "wrong in principle, illegal, unenforceable, and based entirely on a misconception of treaty rights," as he has alleged, then the mere changing it from a temporary to a permanent measure could not make it right. If there is force in these objections to a temporary bill, they apply with equal force to a permanent one. The fact of its being of a temporary nature did not alter the principle involved, and, if the principle was right, it could not be affected by either the curtailment or extension of the period in which the act was to be applied.

Again, the honorable gentleman has said "the passage of this bill will close the last page in the negotiations for a treaty with the United States, and the present treaty will never come before the Senate again." Does he not recognize that in those supposed facts he has put forward a guaranty of the permanency of this bill? For, so long as the American markets are closed to our fishery products, so long will this measure remain in force. If the leader of the opposition desires the permanency of the bill, and verily believes, as he alleges, that this temporary measure will kill all chance of reciprocity, then the logical course for him to adopt would be to support this bill.

One of the most remarkable statements made by the leader of the opposition was that the French and Americans would probably come to an understanding in relation to this measure, and that St. Pierre would be handed over by France to the United States to form a depot for the storing and supply of bait fishes. This flight of imagination was worthy to rank with the brilliant imagery of Jules Verne. I can not imagine any member of this House seriously putting forward such a position that His Majesty's Government would permit the island of St. Pierre to pass into the hands of the Americans as a bait depot, or for any other purpose. When the island of St. Pierre was ceded to the Government of France by that of Great Britain, it was ceded

subject to the stipulation that it should "never become an object of jealousy between the two nations." Can the House conceive of a greater object of jealousy than that that island should be transferred by France to another nation for the purpose of defeating the laws of this colony, which are British laws approved by His Majesty the King, and which could not be set at naught without damage to the dignity and prestige of the Empire? The honorable member may feel perfectly satisfied that so long as the British flag waves in supremacy around the world St. Pierre will not pass under the Stars and Stripes. I can only suppose that the remarkable statement made by the leader of the opposition was with a view to influencing some people outside this House, and not those who are honored with a seat in it. It could never have been put forward seriously as an argument to influence the votes of members of this legislature.

The honorable leader of the opposition also contended that "the practical men of Water Street, the practical men in the House, the practical men throughout the colony, would not be found to support the legislation that I have introduced." I do not know what the honorable gentleman means by "practical men." Did he mean the men who have the largest stake in the interests of the colony, or did he confine the term to the fishermen of the colony? I assume that when he referred to the "practical men of Water Street" he meant the mercantile firms who are largely interested in the conduct of the fisheries of this colony. If such were the case, I shall disabuse his mind of a false impression. Nearly all the mercantile men of Water Street were in favor of prohibiting the supply of bait fishes to foreign fishermen. Before the government determined upon the introduction of this bill, I conceived it to be my duty to ascertain, not only the views of the "practical men of Water Street," but the views of the "practical men throughout the colony," in respect to the subject-matter of this bill. I addressed a letter to the merchants of this city, and to "practical men" outside of it, requesting the favor of their opinions in regard to the matter, and I met with a ready response.

The Hon. Edgar Bowring, of the firm of Messrs. Bowring Brothers, Limited, than whom there is no firm in the colony more largely interested in the fisheries, addressed me a letter in reply, in which the following occurs: "I have to say that I think it is of paramount importance that the government should take immediate steps to prevent the Americans from obtaining bait supplies. It is manifestly unfair that they should have the advantage of obtaining bait under license as heretofore whilst they maintain such an antagonistic attitude toward Newfoundland, and whilst duties on our products entering the United States remain as they are. I thought this matter so important that I called a meeting of the fish merchants, this meeting being held yesterday morning, March 23. There was an unanimous expression of opinion that immediate steps should be taken to prohibit the American fishermen from obtaining licenses, and resolutions were passed to this effect. A joint letter signed by all those present was drafted and sent in to you."

I duly received the letter containing the resolutions passed by the merchants of this city, who are so largely interested in the fisheries,

under date 23d of March, and I will ask the permission of the House to read it:

“ST. JOHN’S, NEWFOUNDLAND, *March 23, 1905.*

“Right Honorable Sir R. BOND, P. C., K. C. M. G.,

“Colonial Secretary.

“DEAR SIR: At a meeting convened and held on this day, at which the following were present: Honorables E. R. Bowring, John Harvey, Eli Dawe, James Baird, R. K. Bishop, Sir Robert Thorburn, Messrs. R. F. Goodridge, J. S. Munn, H. A. Bowring, R. B. Job, and Joseph Outerbridge, to consider the desirability of prohibiting the sale of bait fishes to other than our own fishermen, the following resolutions were unanimously passed:

“*Resolved*, That, in the opinion of the meeting, it is expedient and highly important that immediate steps should be taken to prohibit American fishermen from obtaining supplies of bait fishes in the harbors or upon the coast of Newfoundland, and that a copy of these resolutions, bearing signatures, be forward forthwith to the Right Honorable Sir Robert Bond, P. C., K. C. M. G.

“*Resolved*, That the government be requested to prevent barring of herrings upon the coast of Newfoundland, except only Placentia and Fortune bays, and to put an export tax upon bulk herrings exported in any but Newfoundland vessels.’

“We have, etc.,

(Signed)

“R. THORBURN.

“JAS. BAIRD.

“J. OUTERBRIDGE.

“R. K. BISHOP.

“E. R. BOWRING.

“JOHN HARVEY.

“ROBERT B. JOB.

“H. A. BOWRING.

“R. F. GOODRIDGE.

“JOHN S. MUNN.”

I anticipate that the honorable leader of the opposition will not take the position that the merchants, while in favor of prohibiting the supply of bait fishes to the Americans, also expressed an opinion in favor of an export duty being placed on bulk herrings exported in any but Newfoundland vessels, and that this bill does not admit of any exportation of herring in foreign bottoms under any circumstances. My answer to that position, if put forward, is that the government have not been unmindful of that portion of the resolutions forwarded by the mercantile body which has reference to an export duty. This bill is framed specially to prevent the American fishermen from coming into the bays, harbors, and creeks of the coast of Newfoundland for the purpose of obtaining herring, caplin, and squid for fishery purposes, and it is still competent for this legislature to make provision in respect to the export of herring in bulk in foreign vessels upon the payment of an export duty. It is quite competent for the House to add a clause to this bill enabling the governor in council to suspend the operation of the act at any time it may be considered expedient to do so and to admit foreign vessels for the purpose of taking herring in bulk. It is my intention before the bill passes through to move such a clause for the approval of this

House, which will make it competent for the governor in council to issue licenses to foreign vessels, should it be deemed desirable at any time to do so.

But not only are the merchants of this city in favor of this action of the government, but from communications that I have received from different parts of the country during the past few months I have reason to know that the practical men—the fishermen—are also in favor of the measure.

I do not know to the fullest extent the views of the whole of the “practical men of this House,” but I know sufficient of their views to say that every “practical man” in this House will support this bill.

Many of the fishermen of the country during the last year or two have been greatly embarrassed by reason of the free access of American vessels to our bait supplies. I have received a communication from inspector O'Reilly to the effect that there were instances where our own Bank fishermen were in harbor with American fishermen in quest of bait, and, while our fishermen were prepared to pay an amount equal to that offered by the Americans for bait supplies, the Americans were given the preference, and that in some instances serious loss ensued to our fishermen. Inducements were held out by the American captains by way of cash and other means to secure the preference. This has engendered a feeling of resentment, as well as of determination, and demands at the hands of the government the prohibition of the supplying of bait fishes to the Americans unless for an equivalent in the shape of a free market from the United States. They have borne with their grievance patiently because they thought the Americans would speedily open their markets to Newfoundland fish. If those markets had been opened as was agreed between the government of this colony and the Administration of the United States, there would have been no representation of that grievance to the government of the colony.

There was also a recognition on the part of the fishermen of this colony that we had the whip hand in regard to the fisheries of British North America. There is not the faintest shadow of a doubt upon that point, as I stated on a former occasion. We have already demonstrated to the French that we hold the key to the North Atlantic fisheries.

It had been stated by the leader of the opposition that if we closed our bait supplies to the Americans they could obtain it in Canada. I am aware that the French have been able to obtain a certain amount of bait from the Canadians at St. Ann's and other places in Cape Breton, but the source of supply from that base is very limited, for it is a matter of notoriety that the Canadians have not a sufficient supply of bait for their own purposes, and that they are dependent, to a very large extent indeed, upon supplies obtained in the waters of this colony. I have mentioned this before, and I will now produce the proof.

I hold in my hand papers relating to Canada and Newfoundland printed by order of the Canadian parliament in the session of 1892, and on page 28 of that report I find a letter addressed by C. Edwin Kaulbach, esq., to the Hon. Charles H. Tupper, minister of marine and fisheries at Ottawa, under date 17th of April, 1890. This gentleman, who hails from Lunenburg, Nova Scotia, and who is a member of the Canadian parliament, wrote as follows in respect to the re-

strictions which the government of this colony had placed on Canadian vessels visiting our shores for bait in that year: "Our men are in terrible straits to know what to do under these circumstances, as their bait for the Grand Bank for our summer trip is almost wholly obtained on the south side of Newfoundland. The Grand Bank has been the summer resort of our fishermen for many years, and from various bays on the south coast of Newfoundland their supply of bait has been drawn, these being much less of distance and a greater certainty of bait than Canadian waters. We have hitherto enjoyed the privilege of obtaining bait in Newfoundland to the fullest extent, paying only such internal fees and taxes as were proper. The result of the action of the Newfoundland government will be most disastrous, and one season alone will prove its dire effects on the fishing fleet of Nova Scotia and the shipyards now also so busy and prosperous.

This communication is important evidence as to the value of the position we occupy as mistress of the northern seas so far as the fisheries are concerned. Herein was evidence that it is within the power of the legislature of this colony to make or mar our competitors to the North Atlantic fisheries. Here was evidence that by refusing or restricting the necessary bait supply we can bring our foreign competitors to realize their dependence upon us. One of the objects of this legislation is to bring the fishing interests of Gloucester and New England to a realization of their dependence upon the bait supplies of this colony. No measure could have been devised having more clearly for its object the conserving, safeguarding, and protecting of the interests of those concerned in the fisheries of the colony.

If this bill goes into force, as I believe it will, it must be the means of keeping up the high price of fish, for if we curtail competition we must obtain that result.

I regret that there should be any difference of opinion in this House as regards the desirability, if not necessity, of this measure, the policy of which is the conservation of our fisheries, as well as the betterment of those engaged in them.

I beg to move the House into Committee of the Whole on the bill.

REPLY OF MR. MORINE TO SIR ROBERT BOND'S SPEECH OF APRIL 12, 1905. [a]

MR. MORINE.—He thought that the remarks of the Premier were out of order, and would have better been made in committee. He, therefore, asked the permission of the house to reply. The hon. the Premier divided his subject into two main points: First, the winter herring fishery; second, the bait fishery. He intended to follow the Premier's division; but before taking them up, there were one or two generalities upon which he wished to speak. The hon. Premier accused him of saying that the intention of the measure was unpatriotic as it would drive the people to the States to engage in the herring fishery. He did not think he said intention. If he did, he

[a Extract from the St. John's (Newfoundland) Evening Telegram, April 14 & 15, 1905.]

did not mean it; he meant effect, and there was a great deal of difference between intent and effect. He meant that he considered the means taken to retaliate upon the Americans bad, that it would drive our people to America, as he would presently show. Then the hon. the Premier did not think his action with regard to this measure patriotic. He thought that true patriotism was to speak the truth. It would not be patriotic to endorse a measure which would involve the colony in a great deal of trouble and expense, and prove a farce because the measure was based upon a misconstruction of the treaty of 1818. If he could prove to the Premier he was wrong in his construction of the treaty, and that the bill was ineffective, he was a true patriot. Would he be patriotic to support legislation which he believed to be harmful to the mass of our population. He only said what he believed to be true. He did not appeal to the gallery, he did not appeal to that prejudice miscalled patriotism. He never thought prejudice patriotism. The hon. the Premier, in reply to the contention that the Americans could obtain bait in Canada, read a communication showing the distress caused by the Bait Act in 1890, and argued from it that this could not be done. The people who have advanced this argument must have been reading some of the speeches of the hon. gentleman when he was one of the principal opponents of the bait act. Does not the hon. gentleman remember that period? Did he not remember his promise to the people of Fortune Bay to repeal the Bait Act if his nominee were elected. He admitted the right of the hon. member to change his mind, and would be glad to support the present measure if it were confined to the question of bait alone. With reference to his opposition to the present measure, there would not be the same objection if it were permanent. He had been in favor of the refusal of bait to our competitors when the Bait Act was anathema to the hon. the Premier. The men who gave their opinion upon this measure and passed a resolution in favor of excluding the Americans from bait supply were consistent. They followed out the policy they were the exponents of when the hon. gentleman rated them as selfish men who desired to obtain the government to pass the Bait Act for their own selfish purposes. He was glad to see that time had mellowed and broadened the hon. gentleman's views with regard to those gentlemen and their opinions. He would also note that the hon. the Premier, whilst taking the trouble to obtain the opinions of the mercantile community, by his own admission, had not taken the trouble to obtain the opinions of members of this house.

MR. CASHIN.—Hear, hear.

MR. MORINE.—With reference to the opinion expressed by the merchants of Water Street, in their resolutions, they dealt with two matters.

First: the enforcement of the bait policy.

Second: the question of export duty on herring.

The resolutions could not be construed as in favor of the present bill. The first resolution was only an affirmation of the opinions held by them before the Premier was in favor of any such a measure; the second asked for an export duty of $\frac{1}{2}$ ct. per lb; that the Premier has not added to this bill, therefore he has not acted upon the opinion of the merchants. They knew nothing of the provisions of this bill at the time these resolutions were passed. If they had,

these resolutions might not have been passed. He was aware that some of the parties who signed that resolution were in favor of such legislation as permanent legislation and not as legislation to be repealed upon ratification of the Bond-Hay treaty. He had spoken to one of the parties who had told him that his approval of the resolution was as a permanent measure. Others who had signed the resolutions were supporters of the Bond-Hay treaty and in favor of repeal of the act as soon as a convention between the two countries had been ratified. From this it would be seen that the opinions of the parties signing the resolutions were widely different. He ranged himself in with those in favor of a permanent measure excluding Americans from our bait supply, but could not support the bill before the house. In dealing with the winter herring fishery they wanted a measure that could be enforced. In dealing with the bait policy he did not think that the parties contemplated a temporary measure such as the present. He ventured to think that if the merchants had obtained accurate information as to the rights of the Americans under the treaty of 1818, they would be slow to adopt a resolution of this kind. The merchants would have been slow to pass this resolution if they had considered the full import of the bill. They would hesitate in supporting a measure to take the herring fishery out of the hands of Newfoundland fishermen and turning it over to the Americans. The merchants were under a wrong idea in advocating an export duty of three-quarters of a cent a pound on herring taken by Americans. They no doubt believed it possible to levy such a duty, but they would learn that no duty could be imposed on the herring caught by the Americans, and when they learnt that their views would undergo a radical change. The Premier had stated that he believed that bill would be the closing page of the Hay-Bond Treaty, and would therefore be permanent, and argued that it ought to be supported by him, Mr. M., inasmuch as he said he would support a permanent bill. He would support a permanent bill but he would not support this measure which took the herring fishery out of the hands of Newfoundlanders and placed it in the hands of Americans. What he had stated was that if the Premier would bring in a bill permanently excluding all foreigners from our bait supply he would support it, even though he believed this bill to be the closing page of the Bond-Hay Treaty, he would not support it as he did not accept its adoption as a permanent policy. He did not believe that this country was going to get the Bond-Hay Treaty ratified. He wanted further to point out how illogical were some of the arguments of the Premier with reference to this matter. He had stated that the bait supply was the key to the whole situation, and that this country held that key. In this he, Mr. M., agreed. He had stated in reference to the herring fishery that the whole bait supply came from this country; that if they withheld the supply the American catch would be diminished with the consequent result that the price would go up in the American market, and Newfoundlanders could profitably go into the trade even after paying the import duty. He, Mr. M., agreed there also. But he asked why, if we held this key and could prevent the Americans from taking fish with consequent profit to the people of this country, why not turn that profit permanently. If the American fishermen could not catch the fish the American con-

sumers would have to pay any duty imposed on fish brought in by Newfoundlanders. Why then the necessity of the Bond-Hay Treaty. He would not take it what was true of herring was also true of the cod fishery. If they did not get the bait, the Americans could not catch the fish, or at least catch it in diminished quantity, with the result of better prices for cod, which would enable our fishermen to compete in the trade. There was nothing logical or reasonable in turning the key for a day and then throwing the door open when the Americans gave us free entry for our fish, for the Americans would have a bait supply and could with their own fish shut out the Newfoundland catch from the market. Why was the Premier so anxious for the Bond-Hay Treaty if we had the key. Why the anxiety to throw away that key. For fifteen years this Colony had been giving the Americans that key for nothing, now was the time to adopt another policy, a policy with which no one could find fault—deny them the bait permanently. He would now come back to two main points upon which the Premier had addressed the house at considerable length that afternoon. While stating that one time he had been engaged at the study of law, he regretted that, on account of health, he had been obliged to discontinue. He, Mr. M., was sure that the Premier did not regret it any more than the Bench and Bar of Newfoundland, because the amount of knowledge which he had evinced made us desire that he knew a little more. He would be less dangerous then than now, for “a little learning is a dangerous thing.” When the Premier came to interpreting statutes he was in the position of ignorance of a layman and he regretted to say it, of too many lawyers. Probably no man in Newfoundland had given more study to the Treaty than the Premier, but he had not had the legal training necessary to fit him for the interpretation of statutes. There were certain principles of interpretation which were known only to a man who had studied many branches of the legal profession. He wished to illustrate to the Premier where he had fallen into a trap in the interpretation of the word coast. He had quoted from the report of a Committee which had sat in 1888 as to the interpretation of the word coast in the Treaty of 1818, and he told the house that that interpretation was in all probability based on the opinion of the Law Officer of the Crown, and he had said it was directly opposite to what Mr. M. said. Now a professional man would have seen at once that the Premier was altogether wrong in applying it in the sense he had. The interpretation of the committee was placed upon the word “coast” which excluded the Americans from all waters of the coast, bays, harbours and creeks of that portion of the British Dominions upon which they were to have no rights, and which used in conjunction with the words bays, harbours and creeks simply meant the outer coast, because the Americans had to keep three miles beyond a line drawn from headlands at the mouths of bays. Now to look to the French Treaties what would they find. He would draw the attention of the house to the Treaty of Versailles. He submitted that the French had been exercising the right to fish in the bays, harbours and creeks of the Treaty coast. According to the Premier they did not have that right. In the Treaty of Versailles in 1783 would be found the following. “His Majesty the most Christian King in order to prevent the quarrels which have hitherto arisen between

the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the Treaty of Utrecht from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland in fifty degrees north latitude, and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at said Cape St. John, passing to the north and descending by the western coast of the island of Newfoundland shall extend to the place called Cape Ray situated in forty seven degrees, fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht." They could not put one meaning on it in 1783 and another in 1818. If the Premier would take the trouble to look at the Instructions or Letters Patent of the Governor he would find the word coast used also, "and further know ye there shall be a Governor and Commander-in-Chief (hereinafter called our said Governor) in and over our Island of Newfoundland and islands adjacent, and all the coast of Labrador from the entrance of Hudson's Straits to a line to be drawn due north and south from Anse Sablon," etc. According to the Premier that did not include bays, harbours and creeks and we had a Governor over the coast of Labrador, but not over the bays, harbours and creeks. Now there happened to be a lot of learning on this subject in the report of the Halifax Fishery Commission, and he begged to draw the attention of the Premier to that document. On page 147, in the Brief of the British Government in reply to the Brief of the American Government we find this: "assuming that we should be justified in applying to the language of the Treaty, the decision of the Admiralty Court of the United States, where any words have received a judicial interpretation the Treaty being a contract according to the law of nations, and the Admiralty Courts in the United States being tribunals which administer that law, we find that the term "coast" has received a judicial interpretation expressly with reference to territorial jurisdiction; and that according to that interpretation the word "coasts" signifies the parts of the land bordering on the sea and extending to low water mark," in other words "the shores at low water," that was the British case that the shore extended to low water mark, and that "coast" and "shore" were interchangeable words. Further in the report we find "assuming therefore as established beyond reasonable doubt, that the word "bay" signifies an arm or elbow of the sea inclosed within headlands or peaks and not an indent of the coast," we may consider what is the true intention of the expression "within three marine miles of a bay." Are such miles to be measured from the outer edge or chord of the bay, or from the inner edge or arc of the bay. In the first place it may be observed that the inner edge or arc of a bay touches the coast, and if the distance is to be measured from the shore of the bay, the word "bay" itself has virtually no significance from "coast" and has no supplementary force. The inner edge or arc of the bay is the coast. So said the British case. Now at page 138 of the same report they found that argument put forward for the Colony by Sir W. V. Whiteway. When speaking of the rights enjoyed by the Americans under the Treaty of 1818 he

said the rights of the United States to fish on the Northern and Western parts of the coast between Quirpon and Cape Ray were the same as British subjects possessed. Later on, page 138, it was asserted on behalf of Newfoundland that the American fishermen had not the right to enter any of the bays of that island other than those between Quirpon Island and Cape Ray and thence to Ramea Island. Now, sir, what was the right put forward by the American people. The Premier had read that evening what was obviously a most unfair authority to give here. He had read a dispatch from a British Minister, written after the war of 1812, before the Treaty of 1818, containing the extreme position taken by the British government in opposition to that taken by the Americans.

Right Hon. the PREMIER.—That despatch was an Instruction.

Mr. MORINE. Yes, he knew it was an instruction. An instruction addressed to an officer on the Newfoundland coast defining the rights of the Americans from the British standpoint, which view was not agreed in by the Americans, and in the Treaty of 1818 the British agreed on a different interpretation.

Whereas, the Americans claimed up to 1818 the right to take and cure fish on all parts of the British possessions, the British denied the right and before the difficulty was settled, the despatch referred to was sent out. The treaty stated that the United States renounced forever the right hitherto enjoyed by them to take, dry and cure fish, within three miles of all bays, harbors and creeks, not included in the treaty limits. Did not this renunciation show that both parties recognized that up to the treaty of 1818, the Americans enjoyed the right to catch, dry and cure cod, in these bays, harbors and creeks? There was not a lawyer listening in that house, who would not agree that the renunciation of certain rights, was not an admission of these certain rights. The declaration that they renounced certain rights save within specified limits, was a declaration that they retained these rights within those limits. If he, Mr. M., were to state, that he renounced all right to Bannerman Park, save to the lower corner of it, would he not be retaining the lower corner? Then, if by the treaty, the Americans gave up their rights in British North America, save in Newfoundland, did it not mean that they retained them there? The Premier had accused him, Mr. Morine, of lack of patriotism in opposing this measure, but the arguments adduced by the Premier showed more want of patriotic spirit, inasmuch as they were used to delude the people of this country and lure them on to their own misfortune and destruction. On page 260 of the report, in the speech of Mr. Dana, the leading American Counsel, it was argued that the Americans were merely enjoying their ancient rights, and Lord Loughborough, a much more eminent man than Lord Bathurst, said in the House of Lords that "the fisheries were not conceded, but recognized as a right inherent in the Americans, which tho' they were no longer British subjects, they continued to enjoy unmolested." Now, that was the declaration of one of England's foremost statesmen. Further on Mr. Dana referred to the reply of John Quincy Adams in a discussion with Earl Bathurst. Mr. Adams had said in reference to the right of fish: our right does not rest upon the treaty. The treaty of 1783 did not give us this right; we always had it. We continued to enjoy these rights without geographical limitation, and it was conceded that we did so by the treaty of 1783, and we no more

depend upon a treaty gift of 1783 for the right to these fisheries than we depend upon it for the enjoyment of our right to our territory or our independence." Mr. Adams contended on behalf of the Americans that they owned these fisheries as much as the day they declared war. But the British contended that the Americans fished under treaty rights and as war abrogates existing treaties the rights ceased on the declaration of war.

Mr. Dana says further, "She (Britain) expressly waived all right to exclude us from the Magdalen Islands and from the southern, western and northern shores of Newfoundland."

Great Britain expressly withheld all claim to exclude the Americans from these sections. Now, sir, as far as the word coast was concerned, the Premier's interpretation was based on the fact that when reference was made to Labrador the words bays, harbours and creeks were used in addition. Why were these words added with respect to Labrador and not when referring to the rest of the island. He, Mr. M., thought, nevertheless, that he saw a reason. Looking at the Governor's instructions they would find that he was made Governor of the coast of Labrador and all the adjacent islands. Now almost all the adjacent islands are a narrow fringe along the shore, and the word coast is meant to include the outer edge of the islands, and it would hardly occur that the Governor would exercise jurisdiction over the outer edge of the islands and not over the bays and harbors of these islands. He would, de facto, exercise jurisdiction over them also. He, Mr. M., took it, however, that the reason for using the words bays, harbors and creeks as well as word coast, in connection with Labrador, was because of the peculiar nature of that coast, which is made up almost totally of inlets and small islands, and about the coastline of which there might be exceeding doubts. If the Premier would look at the treaty of 1818 he will find that they were excluded, not only from coming within three miles of the coast, but also from coming within three miles of harbors, bays and creeks. If the Premier were right in thinking that the coastline only came to mouths of bays and harbors and does not enter them there was no meaning in putting in three miles from bays. There would be no meaning in putting an exclusion clause with reference to bays as well as to coasts. But because the coastline follows around the shores of the bays it was necessary to have this exclusion clause inserted, or otherwise they would be able to enter bays which were more than six miles wide. The Americans contended that three miles from the coast of a bay meant three miles from the shore around the bay, and if the bay was more than six miles wide they had the right to enter till they came to where it narrowed down to that limit. But the British contention was that it meant not only three miles from the coastline but three miles from a line drawn from headland to headland across the mouths of bays. But if the words harbors and headlands were not there, you could come up to the shore, because shore is low water mark and the treaty of 1818 gave the Americans the right on our northern coast to take fish of every kind up to low water mark. No cry of patriotism was going to prevent him, Mr. Morine, from interpreting the bill as it should be interpreted. No cry of patriotism could make him support a measure based on a misconception as to its meaning. It was no patriotism; it was foolishness, childishness. It was criminal to pass an act

based on an interpretation that would not hold water in a police court. Just one word more before recess. The Premier in answering his, Mr. Morine's argument, that he would get no legal man to take the same view as that taken by him, the Premier, cited an American lawyer. Mr. Morine would like to amend his former statement and say that it would not be possible to get any good lawyer to take this position unless he were paid to do so. Dwight Foster, the authority cited by the Premier, was paid to take this position, and to make the concessions which we granted to the Americans, and for which we were seeking to get paid, appear as small as possible, and he was only doing his duty as representative of the United States. He, Mr. Foster, argued thus: "You ought not get anything for the herring fishery, because it is a strand fishery and you will not allow us to land on the strand." The commissioners, however, did not entertain that argument. The lawyers on the other side combatted it successfully, and the award of the commission was given in favour of the argument of the other side that the right to take herring included the right to do all things necessary for the enjoyment of the conceded rights, and in accordance with that the commission awarded this country one million dollars for the advantages which we had been extending to the Americans.

The house took recess till 8 p. m.

Mr. SPEAKER resumed the chair at 8 p. m.

Mr. MORINE.—When the house had risen for tea he had been debating the question of American rights on the coast of the island under the treaty of 1818. This was more or less a question for lawyers to interpret, and it might seem a very great waste of time to argue it here, and so it would be if it was a question that the courts were called upon to decide; but as a matter of fact, this legal question is of the greatest importance, as upon it rests the winter herring fishery, and upon it he would say rested the fate of the bill now before the house. He would pay the members the compliment of believing that this was a question of great weight with them; for upon the interpretation of the treaty of 1818 hangs the fate of the winter herring fishery. The Premier had argued that the Americans had no rights in the bays or harbors of any part of the Island of Newfoundland, and because the herring fishery is prosecuted in the bays or harbors, therefore the Americans cannot carry it on. The Premier also said the Americans must have herrings, and they must get them from us, under an export duty to be provided for if necessary, but if we prevent them they cannot have them. The Premier's argument also admits that the herring fishery cannot be taken away from the Americans; but the fact remains; we are simply taking it away from our people and giving it into the hands of the Americans. He felt sure that members would not vote for this measure, that so affected their constituents, by handing over to Americans that which they had enjoyed—an enactment that prevented our people selling, but compelled the Americans to catch for themselves. He would endeavor to show that the bill was worse than useless. The members of the house had had the opinion of the Premier and now they had his to the contrary; but before the bill passed he wished the Premier would take the opinion of competent persons outside the house before proceeding further. In order to get members to vote upon this bill, who would be affected thereby, he presumed the Premier had clearly

proven his case. The member for Bay St. George would not vote to destroy the herring fishery to his constituents and give it over to the Americans; and other members also, expect the Premier to be prepared to clearly show them this will not occur, for if not he felt that men of intelligence could not support the bill. The Premier had said the Americans cannot catch herring in the bays and harbors of the Treaty Coast, because they have not the right, as "coast" does not mean bays, creeks or harbors, and if they did come in the bays or harbors, they have not the right to land on the strand, therefore they are unable to carry on the fishery. He would proceed to show that this interpretation of the word "coast" was entirely fallacious, and that the British authorities had constantly put forward a contrary contention. In the first place, the letters patent issued to His Excellency the Governor contains the words: "All the coast of Labrador, and the islands adjacent thereto." If the Premier's interpretation of the word "coast" is true, that it does not include bays and harbors, it follows conclusively that the Governor is Governor of the outer coast and islands of Labrador, but is not Governor of the harbors, inlets, bays or creeks; consequently, take Hamilton Inlet; the Governor and legislature have made laws respecting this place, yet, according to the Premier's construction, neither the legislature nor Governor has any jurisdiction over this inlet. This is equally so if true in the one case, true in the other, and the Americans have no rights; and if the Premier is correct, new letters patent must be obtained for the Governor, who, according to him, the Premier, is not Governor of the bays and creeks. Again, he found that in 1763 the treaty of Paris gave the French rights to land and fish on our coast. In 1783, by the treaty of Versailles, they were also granted rights on the coast of Newfoundland. From 1714 they were given rights on the coast, and according to the French interpretation they had exclusive rights to catch fish on our coasts, but no mention is made of harbors or inlets in these treaties. Now, according to the Premier, the French never had the right to catch fish in any harbor, or bay, or inlet. There was no need to remind the members that the French did do so, the Premier notwithstanding, and while the British government denied their exclusive right, they yet permitted them to do it, and our own people had been forced out of harbors year after year to permit the French using the coast. Now the Premier surely did not mean to say that "the coast" meant the bays, harbors, creeks and inlets to the French, and that it does not mean the same to the Americans. Another argument was that the treaty of 1818 was endorsed by an Act of Parliament, 59 George III., cap. 38, now on our Statute Books. This act was passed to enable the British government to carry out the treaty of 1818. It gave power to the British government to remove all foreign fishing vessels from all ports, harbors and bays in British North America, except ports on the coast of Newfoundland, where they had treaty rights, and on that part of the coast where they had treaty rights, that is to say, from Ramea to Quirpon, the British government had no right to remove them. Any one reading this act will find that the British government had authority to remove American vessels from all ports in Canada, but not on the Newfoundland coast from Ramea to Quirpon. If the argument of the Premier was correct, it made the act of 1818 an absurdity, and places the British government in an unen-

viable position. The conclusion was absolutely unanswerable in common sense and cool thought. If the Premier's interpretation is right, then from 1818 to the present time, the British government had the power to drive the Americans out of the bays and creeks of Newfoundland where the Americans had no right to go. If the Governor is not Governor of the bays, creeks, or inlets; if the French had no right to enter the harbors, bays or creeks, then the Premier's contention may be right. If the British Government has been asleep for 100 years, then his arguments are right, and if the Premier was right, he, Mr. M., was glad he was wrong, for, by being wrong, he was in the company of the greatest statesmen in Great Britain and France for the past 100 years, who must have been wrong; therefore, he was glad to be classed with such company. The Premier based his second point by admitting, for sake of argument, the Americans had the right to enter the bays, then they had no right to land on the strand; therefore, were unable to take herring. He, Mr. M., pointed out before that such a construction reduced a treaty to mockery. You tell a man to do a thing, give him full powers to do certain work, but in all that leads up to this work you say he must not do. On page 180 of the Halifax commission proceedings he desired to point out that the leading counsel for Canada, the leading counsel of Britain of that day, Mr. Thompson, in reply to Mr. Guy Foster, ridiculed this position. Yes, the highest lawyer of the day was the authority set up to bear him, Mr. M., out in the position he now put forward. Mr. Thompson said in his argument, quoting from page 467 of Mr. Sabine's report:—"And I reply that if a description of the inland extent of the shore over which we may use nets and seines in catching the herring is necessary, it is equally necessary to define our rights of drying and curing cod elsewhere, and as stipulated in the convention. Both are shore rights, and both are left without condition or limitation as to the quantity of beach and upland that may be appropriated by our fishermen. It was proclaimed in the House of Commons more than 2 centuries ago by Coke—that great giant of the law—that free fishing included all its incidents." The free right to fish therefore means the right to land on the strand between the high and low water marks. This land is the property of the Sovereign to give by treaty, and, therefore, the Americans enjoy the privilege to land under this act just as in the case I have just quoted. Mr. Thompson, referring to the argument of Dwight Foster, which was advanced by the Premier just now, points out that the Americans were called on to pay for the right of fishing they enjoyed, and that it was Dwight Foster's argument to cut down the bill of costs as much as possible. He, Thompson, continues, "Here is a construction that the American nation can put forward as the true construction of the treaty for the purpose of obtaining the right to land on the Magdalen Islands, and the moment the shoe pinches on the other side, they want to have the strict letter of the law and nothing else. That is why Dwight Foster puts forward this argument so that he will not have to pay for the rights, but afterwards they will demand them." Thompson wanted to point out that this argument does not affect the British Government if the Americans had the right to land. Another remarkable argument was put forward by Thompson on this subject. This afternoon and tonight he, Mr. Morine, had only argued that the Americans had rights to catch fish in the har-

bors and near the sea shores, but Thompson said more; he said that they not only had an undoubted right to catch fish, but to hire men to catch it for them. He says "It has been shown by numerous witnesses before this tribunal, that these men can come in and employ our fishermen to catch bait for them, and pay our fishermen for doing so." Now I wish to be distinctly understood on this point. I submit without a shadow of doubt—I don't think it will be controverted on either side, at all events it will not be successfully controverted—that if those fishermen having a right to come in and fish, as they undoubtedly have under the treaty, choose to hire men to catch bait for them, they are catching that bait for themselves. That is according to the old Latin maxim of law, "What a man does by an agent he does by himself." He believed that not only would the Americans catch bait, but that the fishermen of the United States would be kept largely supplied by the fishermen of Nova Scotia and others, and not only that, but the U. S. government would argue that right was the purport of the treaty of 1818. The position taken by the counsel just quoted was a startling one, and showed that the terms of the treaty were wide ones. He argued that the right to catch bait was the right to buy it, but this position was necessary for his, Mr. Morine's argument now. The Americans could not only say that this treaty gave them the right to buy bait, but that this bill was a violation of their treaty rights under the treaty of 1818. According to the British lawyers the right to fish meant the right to land on the strand, and all other incidentals connected with the fishery. This point was worth consideration, and he, Mr. Morine, proposed to deal with it another time. When the Americans were given the right to take herrings it was never questioned whether all the rights incident to such a fishery were not also granted them, and he thought it was absurd to suppose that they did not. If he gave a man the right to cross his field he certainly gave him the means to reach the field. If he did not, would be absurd to think that he had not the right to climb over the fence. If he did not have such an understood right it was merely taking away from him by implications of law what he had already given him a perfect right to. Again if he gave a man the right to come to his room, he could not prosecute him for trespass for opening his front door. It was always understood that these smaller rights went with the greater. Therefore, as in the case with the American fishermen, if landing were necessary to the prosecution of the fishery, then they had a perfect right to land. If the government could prevent them from taking herring altogether, it could stop them from storing them up in cold storage, then it would have a good thing and good reason to put up with the loss of the winter herring fishery. But if this measure deprived our fishermen of the right to sell herring according to our own measure, and at a price made by our own law, and the treaty permitted the Americans to take the herring, it was merely transferring the fishery into the hands of the Americans and inflicting a great blow on the people of this colony. This bill will not stop them from getting herring, it would merely make them get the herring themselves. His, Mr. M.'s, point was, if our people were only stopped from selling herring to the Americans, and the Americans allowed to hire men to take themselves, then the measure would do us no good at all, but rather a great deal of harm. By increasing our cod fishery and decreasing their

herring fishery, you only allowed them to increase their codfishery, and thus do us a great harm indirectly. He, Mr. M., had pointed out that he was not against the policy of refusing bait to the fishermen of the United States, but he saw all the losses on the one side and all the advantages on the other. What he wanted to be distinctly understood in was that he was opposed to the loss of the winter herring fishery. At the present time we caught the herring and sold them at our own prices of \$1.25 per barrel. We used our own measure, and our own agents, and the fish went away under bond to the customs that such was not to be used for bait, but was to be deposited in some port in the United States, when the bond was delivered. It was true we could not trace it after that, but we had the satisfaction of knowing that we had the control of them so far. This measure would only prevent our people from selling them, and the American fishermen would bring his own implements and have his own measure, and would buy at his own price, and they would not go away under bond and he would land them wherever he pleased. Was it not much better to have them under bond to us so that we could control them, and know their landing place. With this bill in force he thought we could not. Was it not much better for the American to buy from us than to catch them himself. Was it not better that he should use our measure than his own, and have our fixed price than any price he cared to put on them. They would have bait, and was it not as well that they should buy it from us as catch it himself, and he believed that the American fishermen preferred to buy from us rather than catch it himself. If we allowed this fishery to pass out of our own hands, and let them do their own catching, they would never give it up, and we may get the Hay-Bond treaty, but we would never get back our trade or our winter herring fishery. Once he gets hired men to do the work for him he will never purchase bait again, even though we invited him to come back. That was one reason why he was opposed to the bill. Another reason was it did not go far enough. He thought that such a measure regarding the bait supply might be made permanent, and if it were not permanent then it was no good. Further, he was against the principle of the bill. Its principle was that of retaliation and not the expediency of a bait supply. It may be asked what good would come of a permanent bill and what harm would result from a transitory bill. If this were enforced for one year, there would be no investors in the herring fishery, and it would not build up a merchant marine. There would be no encouragement to build up a business, because after a year the bill may be repealed and the Americans could again come and fish side by side and compete in the markets with our fishermen. What harm could it do? He did not dispute that the herring fishery was not so valuable as the cod fishery, but many of our people made good money by the sale of herring to the fishermen of the United States. This measure would not increase the number of vessels. A great many would lose employment, and no good would result to the country at large. If the measure were only enforced temporarily the injury would be permanent, whereas on the other hand in the end it would do good for the people at large for then each could share in the others prosperity. For these reasons he, Mr. M., would enforce the restriction of bait permanently, and would not support a temporary measure. This document was worthless when it was passed.

He said that the bill was illegal, and he would show why. In the first place, it was an attempt to amend an act of the reign of George IV., as he had already noted. This act was in force in England, and cannot be amended as stated in the act of 1818 and provided for in the act of 1819; therefore he would repeat that it was useless if it alters all that was done in 1819. Secondly; it is a mere copy of an hostile act of legislation passed in Canada more than 70 years ago, but was never acted upon. With regard to this, President Grant, in his annual message to the Congress, in 1870, wrote as follows, as anybody could see by referring to the evidence of the Halifax Fishery Commission. It reads:

"The course pursued by the Canadian authorities towards the fishermen of the United States during the last season has not been marked by friendly feeling. By the first article of the Convention of 1818, between Great Britain and the U. S., it was agreed that the inhabitants of the United States should have for ever in common with British subjects the right of taking fish in certain waters there defined. In the waters not included in the limits named in the convention, within three miles of parts of the British coast, it has been the custom for twenty years to give to intruding fishermen of the United States, a reasonable warning of the violation of the technical rights of Great Britain. The Imperial Government is understood to have delegated the whole or a share of its jurisdiction or control of these inshore fishery grounds, to the colonial authority, known as the Dominion of Canada, and this semi-independent, but irresponsible agent has exercised its delegated powers in an unfriendly way—vessels have been seized without notice or warning, in violation of the custom previously prevailing, and been taken into Colonial ports, their voyages broken up, and the vessels condemned. There is reason to believe that this unfriendly and vexatious treatment was designed to bear harshly upon the hardy fishermen of the United States, with a view to political effect upon the Government." He, (Mr. Thompson), in his argument goes on to say that the President used the strongest language of a threatening description and made this the subject of the gravest possible complaint. He, Mr. M., too thought the United States would resent this bill and he believed that the British Government would never allow it to go into force. The Premier in speaking this afternoon referred to a remark of his with regard to the island of St. Pierre. I pointed out that the enterprising Americans on our West Coast, would come to an understanding with the French, and the French and Americans together would erect bait houses at St. Pierre, and make the Island a bait depot. The Premier referred to an engagement made between England and France that St. Pierre should not become an object of jealousy, and consequently thought that the Imperial Government would prevent the United States of America from using St. Pierre as a baiting station. The Premier seemed absurdly filled with an abundance of faith on that particular point. Had not St. Pierre been an object of jealousy for many years? Had it not for many years been a smuggling centre? Had there been one single year in which St. Pierre had not been an object of jealousy to us? And in spite of that fact the Premier thought that it could not possibly any longer be an object of jealousy. The Premier says that British Government would not permit such a state of affairs to exist. Good Britisher as he, Mr. M., was, good

imperialist as he was, he was nevertheless compelled to point out that the Imperial Government had not always enforced the rights of this colony, or the rights of Canada as against the United States. Take for example the backboneless policy pursued by H. M. Government in connection with the Behring Sea and Alaska question. If by this Act Newfoundland drove the Americans to make St. Pierre a base for their fishing operations, did the Premier base a hope on what the Imperial Government would do against the Government of the United States to prevent that? The day was gone by when England was the mistress of the sea in Northern waters. It was a hard fact to face, but it was a fact, that in very many cases the interests of British North America had been sacrificed rather than friction with the United States should be caused. And it was certain that the rights of Newfoundland would be sacrificed. It was right that Newfoundland should be sacrificed for the Empire on the principle that the few should be sacrificed for the benefit of the many, just as the Premier was, in this case, sacrificing the few for the many. Then the Premier said he was going to move a suspending clause. That threw a totally new light on the matter. Since his, Mr. M.'s, last speech in the house some new ideas must have entered the brains of the Government. He would tell them that there was another suspending clause that they would need before the bill was sanctioned and became law, and that was that the bill should not come into operation until sanctioned by the King, because the bill itself strikes at the Treaty rights of the United States. He had tried to point out—and failed—that the bill, while copied from the Statutes of some of the Canadian Provinces, differed in its application to this country. This bill provided that any vessel in any harbor of the Island could be boarded by a constable, and the master brought before a Magistrate. In Canada that was within their power; an American vessel had no rights in Canadian waters at all, but in Newfoundland waters American vessels have rights, and for a constable to board a vessel and bring her captain before a magistrate, in accordance with the provisions of this bill, was in itself a breach of treaty rights. Even if the question was determined in favor of the captain, it was a breach of treaty rights, for the vessel had suffered because of the operation of this bill. It was possible for Canada to put a bill of this sort in operation, but it was impossible for Newfoundland to do so, so far as the treaty coast was concerned. If there was no suspending clause holding over the operation of the bill until sanctioned by the King, then the Governor would hold the bill for Royal sanction. In fact, if he did not do so he would be putting himself in a dangerous position. But if, as was suggested by the Premier, the house give the Governor in Council the right to suspend the operation of the bill, then it means that the Governor in Council is given the right to deal with the herring fishery in accordance with its own will and pleasure, without the knowledge or consent of the house. What that meant was that the bill was simply being used against the United States for the purpose of securing the Bond-Hay treaty. Then when that treaty was secured the bill would be done away with, without the sanction of the house, and in that way the Bond-Hay treaty would be put through without the sanction of the house, because the government would be in a position to say that because of the power vested in the Governor in Council to suspend the act, and because of

their suspension of it, everything that was necessary to be done to set the Bond-Hay treaty working had been done, and thus practically the Bond-Hay treaty would not really receive the sanction of the house. Had the judgment of the government flown to brute beasts? Surely the members of the government ought at least to have independent judgment enough to give a personal vote in such an important matter, now that they were fully acquainted with the facts, and were not voting in the dark. One more word in conclusion. He had been reproached this afternoon for lack of patriotism because he had contended that, because of the treaty condition of Newfoundland, the Americans had certain rights in Newfoundland waters. It would be remembered how, in 1888 or 1889, when the Bait Act was passed, the present Premier eloquently and forcibly argued against it, and so eloquent and forcible was his argument that he carried the country with him. He contended that it was not possible to apply the Bait Act as against the French. But the Premier's arguments were not then considered unpatriotic. The Premier had simply said what he believed. He thought that the people of the country would be injured, and that no permanent good would flow from that injury. If he believed in his own arguments he was not unpatriotic. If he did not believe in them, he was both unpatriotic and false. He, Mr. M., acquitted the Premier of any charge of unpatriotism because of his stand against the Bait Act, for he believed that the Premier honestly believed in the position which he had assumed. But he, Mr. M., in his opposition to the present measure had an equal right to acquittal of the charge of unpatriotism. He, Mr. M., had as much right to point out what the American rights in Newfoundland waters were, as the present Premier had to point out the French rights in connection with the bait act. Both the Premier and himself were right, because it was not patriotic to let a measure pass without the house and the people being made fully aware of existing rights which were affected thereby. To let such a measure pass, without full explanation, was not patriotism; it was ignorance; it was fear of the mob; it was anything but patriotism. Would it be patriotism for him to say nothing about the American rights which he knew existed, and to let this bill pass misunderstood by the house and the people generally? Then when the bill was passed, and it was found out that it was passed under a misconception of the rights affected thereby, then when the effects of the measure were fully disclosed, would those who let the bill pass through misunderstandingly be considered patriots, or would they be considered merely prejudice blunderers, mere gallery speakers? If, from his speech, new rights accrued to the Americans, then would his speech be unpatriotic? But he could assure the house that the Americans knew what their rights were. Nothing that he could say would in any way enlarge these rights. Neither could he say anything that would cause the Americans to understand the nature of their rights the better. But he would like to enlarge the knowledge of the people of Newfoundland as to the nature of American rights, and to enlarge their appreciation of what they would have to pay for this bill. If by anything he could say, he would open the eyes of the people to a true understanding of the real nature of this measure, then he would consider himself far more patriotic than the men who were passing this measure by deluding the people, and were leading them into a trap. He declared

the fact that the effect of the bill would be to destroy the winter herring fishery. He declared the fact that the people of Newfoundland would have to pay too dearly for this measure. If the people of the country understood that, and consented to pay the price, then he was not responsible, for he had done his duty in pointing out the facts. He was not to be considered an American advocate because he stood in his place in the House of Assembly and explained the nature of the rights which the American people had on the coast of this island, because of a treaty with His Britannic Majesty. Some members of the house seemed to consider it their duty to allow measures to pass without explaining the price that would have to be paid therefor. The measures were passed, and the people hurraed; but there was no hurrah when the price came to be paid. The patriot will explain the price which has to be paid, even if he were to be stoned for his courage. There was one more subject on which he would like to touch before concluding. The Premier had gone out of his way to state that a Mr. Whitman, of Canso, had put up a bait house at that place for the purpose of supplying Americans with bait. Mr. Whitman was a private business man, and has as much right to enter into the bait supplying business as any of the gentlemen who are in the bait supplying business at Petty Harbor. Then it was not good grace on the part of the Premier to attack Canada for not helping Newfoundland in dealing with the Americans. The Bond-Blaine and Bond-Hay treaties were both attempts to sell out Canadian interests. Why should not Newfoundland enter into negotiations with Canada to receive and give help in this matter? Canada was not helping the Americans against us. In the long run Newfoundland and Canada must come together for a mutual enforcement of their fishing rights as against the Americans. Instead of the Premier trying to make separate arrangements between Newfoundland and the United States, let the Premier advocate a British North America policy—an Imperial policy. All the British people would help to bring it to a satisfactory conclusion. Just one word in conclusion. There is one thing certain, if this bill becomes law, and is put in force, the winter herring industry will be utterly destroyed. The same number of herring will be caught, the same number of herring will go away from this country, but they will be caught by Americans; and the people of Newfoundland will be driven to take the beggarly wages paid them by the American fishermen. Let no member of this house say that he did not know the circumstances in connection with the matter, or that he was misled by the Premier's statements in connection therewith. No member can say that, for both the law and the fact has been put before him. He, Mr. M., was prepared to stake any little reputation that he might have on the accuracy of his statements. He challenged the Premier to put the matter before any competent tribunal for decision. The Premier knew in his own mind that that would be the effect of the bill. Let that portion of the bill which dealt with the Treaty Coast be abandoned, and the policy of the government settled on a permanent basis with respect to that part of the coast over which the Newfoundland Government did have control, and he would support the measure. For fifteen years the Premier had been failing to conclude negotiations with the United States for this reciprocity treaty, and though he, the Premier, well knew deep down in his own mind that the principle upon which

his negotiations rested was wrong, and that the present measure would be a failure, he was afraid to change the past. Everything that the Premier had done in this connection turned out to be a failure. He, Mr. M., had not at that stage intended speaking at such length, as he could have availed himself of the opportunity when the bill was in committee, but he felt himself constrained to make answer to the arguments and accusations which had been made by the right hon. Premier, and he now left the matter in the hands of the house, and if the accuracy of his arguments were not vindicated in the house they would be by the people, and if not by the people, then in the hereafter.

On motion, the bill was referred to a committee of the whole.

Mr. Speaker left the chair.

Mr. Barnes took the chair of the committee.

SPEECH OF THE RIGHT HON. SIR ROBERT BOND, K. C. M. G., P. C., PREMIER, ON THE MOTION TO GO INTO COMMITTEE OF THE WHOLE ON ADDRESS TO THE SECRETARY OF STATE FOR THE COLONIES, IN RELATION TO THE *MODUS VIVENDI* ENTERED INTO BETWEEN HIS MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA RESPECTING THE FISHERIES OF THE WEST COAST, FEBRUARY 12, 1907.[*]

In moving the adoption of this address I would crave the indulgence of the House if, in doing so, I am compelled to trespass upon its time and patience longer than is my custom. In dealing with this question it will be necessary for me to quote in full such despatches as I am permitted to table, and also have reference to other data that, I regret to say, I am not permitted to lay upon the table of this House.

This is the first opportunity that has been afforded the government to publicly state their position in relation to the *modus vivendi* entered into in October last between His Majesty's Government and that of the United States of America.

I have seen quotations from a local newspaper in the British press, accompanied by the statement that the extracts had appeared in my "personal organ," and were believed to have been "inspired" by me. I have no "personal organ," and I have not "inspired" anything that has appeared in the local newspapers. When I was waited on by a representative of the local press and asked for an opinion on the *modus vivendi*, I respectfully intimated to the gentleman who desired to interview me that I considered it best to refrain from giving expression to the government's views until the legislature met.

The time has now arrived for the government to fully and freely set forth its position on this question. It would perhaps be too much for me to expect that my views and opinions will pass unchallenged, but I am hopeful that my statement will convince the House that the question involved in the *modus vivendi* is not a mere party, political one, but a grave constitutional question in which this colony and the other colonies of the Empire are interested, and that, therefore, unanimity of action in respect thereto may be secured. There has been unanimity of action outside this colony.

Very rarely has the press of Great Britain and of His Majesty's Dominions beyond the Seas shown greater unanimity than in its support of the action of this government in relation to the *modus vivendi*. The extraordinary nature of the arrangement, and the extraordinary manner of its accomplishment, has occasioned a feeling of indignation and alarm from one end of the Empire to the other. The leading journals of the Canadian Dominion, of the Commonwealth of Australia, of New Zealand, of South Africa, and of India have given forth no uncertain expression of interest in the question that the *modus vivendi* has raised, an expression of interest in which indignation and alarm has been blended with genuine sympathy for the people of this colony.

Some one has said that the press is the great judiciary of these modern times. The press referred to of course are those journals the wide world over whose columns are untarnished by prejudice or passion, by personalities or partizanship, and which stand for truth and justice alone. I rejoice exceedingly that the decision of this great tribunal has been in favour of the position that this government has taken upon the question.

The question that the *modus vivendi* has raised is not one of mere local concern. This colony is primarily affected thereby, but not by any means solely affected; hence the interest that has been taken in the matter throughout His Majesty's dominions. Principles of the highest importance are involved therein, principles which form the substratum upon which the liberties of the colonies under responsible government are based.

The real question at issue is, how far, according to the principles of the constitution, His Majesty's Ministers have the power to set aside or limit the operation of local laws which have received the royal assent, and dispose of the resources of the colonies without their interests being consulted or their sanction obtained.

Let us briefly consider the subject of responsible government before we proceed to analyze the arrangement that we regard as in conflict with its principles.

In the year 1838 Canada was in a state of insurrection. From Prince Edward Island away west to Toronto there was discontent which found expression in deeds of violence. This was consequent upon political grievances that had for several years existed. It was at this juncture that the Imperial Government despatched the Earl of Durham to proceed there as Governor-General and Lord High Commissioner to investigate the affairs of the whole British North American Provinces. In the year 1839—that following his appointment—Lord Durham presented to the Queen an elaborate report on the result of his enquiries, in which he attributed all colonial evils to the absence of responsibility of their rulers to those whom they were called upon to govern, and he recommended as a panacea for all existing political complaints the introduction into the several British North American colonies of the principle of local self-government. Two years later—in 1841—responsible government was introduced into Canada, and its success in Canada, under the presidency of Lord Elgin, father of the distinguished gentleman who is now Secretary of State for the Colonies, led to its introduction into the maritime provinces of British North America, and subsequently into the

several colonies of Australia, New Zealand, and the Cape of Good Hope.

It was in the year 1855 that responsible government was granted to this colony. Under and by virtue of the constitution then granted to us, we, in common with those other colonies possessing responsible government, enjoy the privilege of supreme authority within the limits of the colony to provide for the peace, order, and good government thereof. We possess unreserved powers to deliberate and determine absolutely in regard to all matters of local concern, and complete powers of legislation. We are free to regulate our own commercial policy as we deem best, subject only to the proviso that we may not use this liberty to the direct injury of British commerce, nor infringe upon obligations incurred by the Mother Country in her treaties with other nations. Todd, one of the best authorities upon parliamentary government in the colonies, says that "in granting these high and important privileges the Crown did not divest itself of its supreme authority over the colonies, but that authority is exercised only in the appointment and control of a governor as an imperial officer, and in the allowance, or disallowance, in certain cases, of the enactments of the local legislature."

All statutes assented to by the governor of a colony go into force immediately, unless they contain a clause suspending the operation until the issue of a proclamation of approval by the King in Council, or some other specified provision to the contrary, but the governor is required to transmit a copy of all statutes to the Secretary of State for the Colonies, and the King in Council may, within two years after the receipt of the same, disallow such act. All colonial enactments are submitted to the scrutiny of counsel by the Department of the Secretary of State, and unless they are repugnant to the law of England, or inconsistent with any treaty obligation of the Crown, or prejudicial to the rights and property of British subjects residing outside of the colony, or prejudicial to the trade and shipping of the United Kingdom or its dependencies, the extreme measure of disallowing colonial acts is seldom resorted to. In fact, the veto of the Crown has for many years fallen into disuse, and when acts have appeared to His Majesty's Government to be objectionable they have formed the subject of correspondence with the colony concerned in order that the legislature thereof may apply the remedy.

Now, then, having briefly reviewed our rights and privileges under responsible government, and also the limitations that the Crown has placed upon the same, I would observe that if we, as colonists, had been guilty of asserting rights which do not attach to us and had persisted in disregarding solemn obligations contained in treaties, or in setting at nought imperial acts of Parliament, then we should have forfeited our rights under the constitution and have deserved to be overridden. But even under such conditions any curtailment or suspension of our laws could, I submit, only take place at the hands of the Parliament of Great Britain, for Parliament alone has the power to limit or annul the laws of this colony when once approved by the Crown. If this is not the correct position, and His Majesty's Ministers have the power by a diplomatic arrangement to set aside the statutes of this colony and to dispose of its resources, then the constitution of which we have been so proud is something

totally different from what we have believed it to be, and in very fact responsible government in the colonies is a mere delusion.

If, on the other hand, it shall be shown that His Majesty's Ministers had not lawful authority to deal thus with this colony, and that the *modus vivendi* was an instrument entirely *ultra vires* within the jurisdiction of this colony, then it is clear that an attempt has been made to override the constitutional rights of this people, and this government was justified in resisting each attempt by every constitutional means at its disposal.

The question that presented itself to us was not a mere party political question; it was a great constitutional question. It was not a mere local question; it was one that touched every colony possessing responsible government, and it therefore awakened the sympathy and support of all those who are deeply interested in the integrity of the Empire and who are proud of their origin and inheritance.

In order to view the present position aright it is necessary for us to have regard to the condition of things that preceded it, and for this purpose I shall rapidly review the history of our relations with the United States in respect to the fisheries since the termination of the Washington Treaty in 1884.

On reference to the journals of the house of assembly it will be found that on the 1st of August, 1885, a telegram was received by the officer administering the government of this colony from the Secretary of State for the Colonies, intimating that His Majesty's Government deemed it "desirable that steps should be taken by the government of this colony to decide definitely on the exact nature of the proposals to be made to the Government of the United States in anticipation of the negotiations which were contemplated in view of the termination of the temporary arrangements that were made by His Majesty's minister at Washington with the United States Government arising out of the termination of the fisheries articles of the Treaty of Washington of 1871, on the 30th June, 1835." The answer which appears to have been given by the government of this colony to this representation was the introduction of the Bait Act in the year 1886. That the adoption of that measure had special reference to the United States of America is clearly evidenced by a despatch from Sir G. W. DesVoeux to the Colonial Office, bearing date 25th of May, 1886, wherein he stated that—

"The people in Newfoundland, like those of Canada, desire to use the right to withhold a supply of bait as a means of inducing the American Government to remove the import duties on British fish." And again, in that remarkably able despatch from Sir. G. Wm. DesVoeux to the Colonial Office, bearing date 4th of January, 1887, in support of the Bait Act, wherein he stated that—

"American fishermen are protected in the markets of the United States, which take all their products, by a duty of 56 cents per quintal, which is almost prohibitive to the results of British industry;" and

"Though the measure, if allowed, would to a large extent place the fisheries in this neighborhood within the control of the people of this colony, they have no desire to monopolise them, and I feel satisfied that they would willingly modify the provisions of the measure in favour of such governments as would grant a proportionate reciprocity. . . . I have very good reason for believing that as regards

the United States the right of obtaining bait would be restored on the opening of the American markets to Newfoundland fish. . . . In a word, the principle that the colonists desire to maintain is 'live and let live' and they merely object to that of 'let others live by killing us.'"

Following upon this despatch, the late Sir Ambrose Shea and the late Sir Robert Thorburn proceeded to England to urge upon His Majesty's Government the ratification of the measure for which Sir G. Wm. DesVoeux had so eloquently pleaded, and while in London, namely, on the 16th of June, 1887, Sir Ambrose Shea received a letter from the office of legation of the United States intimating that—

"Should the government of Newfoundland see fit to give notice that American fishermen be admitted to the ports of that Province for the purpose of obtaining supplies the proposal will be cordially accepted and acted upon by the Government of the United States. In that event there would be no objection on the part of the United States Government to entertain suggestions for an independent agreement in respect to the fisheries of Newfoundland, and if made by the authorized agents of the Imperial Government."

This was communicated by Sir Ambrose Shea to the Colonial Office and also to the government of this colony, and I find that, on the 3rd of August, 1887, the following Minute of Council was adopted, viz:

"A communication was read from Sir A. Shea, enclosing a letter to him from Mr. Phelps, United States minister in London, on the subject of negotiations for an arrangement between the United States Government and this colony in regard to fishery questions, and to the effect that the granting of permission, during the present season, to the United States fishermen to obtain supplies in the ports of this colony would be regarded with favour by the Government of the United States in connection with such negotiations.

"The Council are gratified at the expression, on the part of the United States Government, of a disposition on their part to enter into negotiations in relation to this important question in a friendly spirit.

"The Council are of opinion that it would be greatly to the advantage of the colony to be in a position to negotiate for an independent ('separate') arrangement with the United States in relation to fishery and other questions, and that it is desirable that authority should be obtained from Her Majesty's Government for the purpose of opening communication with the United States Government upon the subject as soon as opportunity may appear favourable, subject to such condition as Her Majesty's Government may consider it advisable to prescribe."

Nothing came immediately of this overture. On the 15th of February, 1888, what is known as the Chamberlain-Bayard Treaty was signed at Washington. This treaty provided for free fishing in exchange for the free admission of fish and fish products, the result of British catch, into the markets of the United States of America. This treaty was approved and signed by the United States Government, but was rejected by the United States Senate, and the fishery privileges of the United States consequently reverted to those embodied in the Treaty of 1818.

In this same year, 1888, the Bait Act referred to in the despatch of Sir G. W. DesVoeux was brought into force, and under the provisions of the same, foreign fishing vessels were excluded from the

inshore bait fisheries, except under license, and notices were issued to the United States Government from the department of the Colonial Secretary of this colony calling attention to the provisions of the said act.

By virtue of the authority vested thereunder in the Governor in Council, a tax of \$1.50 per net ton was imposed upon all American fishing vessels visiting this coast in quest of bait fishes.

Our relations with the United States continued in this form until the year 1890, when, by a despatch bearing date 28th February, 1890, from Sir Terence O'Brien, governor of this colony, to the Secretary of State for the Colonies, the question of a direct and independent trade arrangement between this colony and the United States of America was revived. This negotiation resulted in my being authorised to proceed to Washington to assist in bringing about such an arrangement. The result of my visit to Washington was what is known as the Bond-Blaine Convention of 1890, which was virtually upon the same lines as the Chamberlain-Bayard Treaty of 1888. This convention was approved by the United States Government, but was not ratified by His Majesty's Government, owing to a protest from the Government of the Dominion of Canada, wherein it was contended that before such ratification was made the Canadian Government should be afforded an opportunity to negotiate a similar treaty on her own behalf. His Majesty's Government furnished repeated assurances to this government that the ratification should not be indefinitely postponed, and that when it should appear to His Majesty's Government that a reasonable time had been afforded the Government of the Dominion of Canada in which to negotiate, the assent of the Crown to the convention would be forthcoming.

In view of the fact that the United States Government had signified its willingness to exchange a free market with us for bait privileges, and that our convention was not held in abeyance by reason of any action or want of action on its part, the government of this colony extended to United States fishermen for a period of twelve years all the privileges that it was contemplated should be granted under the Convention of 1890.

During those twelve years the government of this colony persistently urged His Majesty's Government to fulfil its undertaking as regards the United States convention, but without avail.

In 1902 I was in England in connection with His Majesty's coronation and the conference of colonial premiers, and after those functions were over I availed myself of the opportunity of pressing upon the then Secretary of State for the Colonies—Mr. Chamberlain—the unfairness of the treatment that had been meted out to us as a colony during the twelve years previous in relation to our proposed trade arrangement with the United States of America, and begged the privilege of being again permitted to proceed to Washington to reopen negotiations with the United States Government for an arrangement upon the lines of the Bond-Blaine Convention. That distinguished gentleman, who will ever be justly regarded as the greatest friend the colonies have had in the Colonial Office, acceded to my request, and furnished me with the necessary authority to proceed to Washington. The result of my visit was what is known as the Hay-Bond Treaty of 1902. This convention was ratified by the Secretary of State of the United States on behalf of his Government, and by

the late Sir Michael Herbert on behalf of His Majesty's Government. It provided, as did the former convention, for the free admission of fishery products of this country into United States markets in exchange for baiting privileges in this colony. That convention was held in abeyance for some considerable time by the Foreign Relations Committee of the United States of America, but in the year 1904 it was reported by that committee to the United States Senate, where it was virtually amended out of existence at the instance of the fishery interests of Gloucester.

Between 1902 and 1904 the privileges that had been freely extended to the United States during the twelve years previous were continued, but after the action of the United States Senate became known to this government, in the interests of the trade and commerce of this colony it was determined that the policy of the government of 1885—which had been so forcibly and ably advocated by the then governor, Sir G. W. DesVoeux—should be enforced against American fishermen.

When the legislature met on the 30th of March, 1905, his excellency the governor, in the speech from the throne, said:

"I would observe that the serious loss occasioned the fishermen of this colony last season by the difficulty of obtaining a full supply of bait fishes rendered it imperative for my ministers to consider whether the very valuable bait privileges conceded to the fishermen of the United States by the government of this colony, in expectation of the ratification of the convention, could be continued without detriment to our fishery interest. After very careful enquiry and consideration it was decided that, under existing circumstances, local interests would be best conserved by withholding those privileges."

In order to more effectively carry out the provisions of the Bait Act, which had been in force for nearly twenty years against French fishermen, but which, for the reasons I have set forth, were not enforced in their entirety against American citizens, the government introduced the Foreign Fishing Vessels Act of 1905, whereby it was provided, amongst other things, that it shall be unlawful for the master of any foreign fishing vessel "to engage any person to form part of the crew of said vessel in any port or on any part of the coasts of this island."

The method adopted by American fishermen of conducting the herring fishery on the west coast of this colony had ever been by purchase or barter. The Bait Act, as it stood, enabled us to prevent a continuation of that practice, but the government appreciated that the Americans would attempt to overcome the difficulty occasioned by the enforcement of the Bait Act by engaging local fishermen to form part of their crews and to catch the fish they required. It was for the purpose, then, of preventing this evasion of the spirit and intention of the Bait Act that the clause that I have referred to was inserted in the act of 1905.

At the close of the session of 1905, this Foreign Fishing Vessels Act was assented to by his excellency the governor and became the law of the land.

In October of that year the autumn herring fishery on the west coast commenced, when it was found that American fishermen were determined to ignore the provisions of the Bait Act as well as the Foreign Fishing Vessels Act of 1905. The position was further aggravated by their refusing to comply with our customs and reve-

nue laws, and to enter and clear and pay light dues as they had ever done heretofore.

Out of deference to the wishes of His Majesty's Government, this government abstained from enforcing local statutes against American citizens, on the treaty coast, during the autumn fishery of 1905, thereby occasioning themselves very considerable embarrassment. They were led to adopt this course, believing that during the period that would elapse before the next fishing season came round a special effort would be made by His Majesty's Government to arrive at a satisfactory solution of the difficulties that had arisen by reason of the action of United States fishermen, and, failing such solution, that His Majesty's Government would strictly confine the United States to the privileges accorded its inhabitants by the Treaty of 1818.

It will be remembered that at an early period of last session I introduced a bill to amend the Foreign Fishing Vessels Act of 1905, by declaring that the first part of section 1 and the whole of section 3 thereof do not apply to foreign fishing vessels resorting to Newfoundland waters in the exercise of treaty rights. This was done at the request of His Majesty's Government in order to meet objections that had been raised to the measure by the Government of the United States.

The Foreign Fishing Vessels Act of 1906 also contained the provisions (1) that it should be unlawful for a resident of this colony to leave it for the purpose of engaging in foreign fishing vessels intending to fish in the waters of this colony, and (2) that it should be unlawful for the master, owner, or agent of any foreign fishing vessel to engage British subjects to fish for them within the territorial waters of this colony. These provisions were rendered necessary because, while the Bait Act of 1887 declared that no man should take bait fishes within the jurisdiction of this colony without a license, and the Foreign Fishing Vessels Act of 1905 declared that any master who attempted to engage any person to form part of the crew of any foreign fishing vessel in any port or on any part of the coast of this island should have his vessel confiscated, in the autumn fishery of 1905 the Americans deliberately proceeded to aid and abet our fishermen in violating the Bait Act by engaging them through agents in Bay of Islands as part of their crews, taking them outside the 3-mile limit to formally ship and enter their service and returning with them inside our jurisdiction to fish.

It will be observed that whereas the Foreign Fishing Vessels Act of 1905 penalized the master of any foreign fishing vessel for engaging any person to form part of the crew of said vessel within the jurisdiction of the colony, the amending act of 1906 penalized the master, owner, or agent of such vessel who should engage British subjects either outside or inside our jurisdiction and utilize them within our jurisdiction to fish for them.

The machinery for a complete control over our own people so as to prevent them from aiding the Americans in catching such fishes was thus provided by this legislature, but this machinery was rendered inoperative by the *modus vivendi* and its promulgation by the senior British naval officer on this station.

Let us now examine this extraordinary diplomatic arrangement known as the *modus vivendi*. I use the term extraordinary because I have been unable to find any precedent for such an arrangement.

Because, while the statute law of this colony (which, until disallowed, is the law of the Empire) declared "Thou shalt not," the *modus vivendi* declared "Thou shalt," and thereby purported to legalize what the law had penalized. Because while the constitution under which we live confers upon this legislature supreme authority within the limits of the colony to provide for the peace, order, and good government thereof, and unreserved powers to determine absolutely in regard to all matters of local concern the *modus vivendi* purported to strip this colony of those powers and to vest them for the time being in His Majesty's Ministers. Because in the year 1865 the Imperial Parliament passed an act to remove all doubts as to the validity of colonial laws, the 7th section of which provides that—

"All laws or reputed laws enacted or purporting to have been enacted by the legislatures which have received the assent of Her Majesty in Council, or which have received the assent of the governor of the said colony in the name of and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the date of such assent for all purposes whatever."

Because the British Parliament having thus declared the validity of our laws it alone had the power to suspend, limit, or annul the same.

On the 6th of October last the Secretary of State for the Colonies announced to this colony by telegraph the conclusion of a *modus vivendi* with the United States Government and furnished a full text of its terms, which may be summarized as follows, viz:

1. Permission to the Americans to use purse seines during the ensuing season, the use of which instruments of capture the law of this colony had prohibited and penalized.

2. Permission to the Americans to ship Newfoundland fishermen outside the 3-mile limit, which by the law of the colony was prohibited and penalized.

3. The undertaking on the part of His Majesty's Ministers not to bring into force the Foreign Fishing Vessels Act of 1906, an act regarded by the legislature of this colony as essential in order to control the conduct of British fishermen and effectively enforce the provisions of the Bait Act.

4. An undertaking on the part of His Majesty's Ministers to limit the operation of a law of this colony (the Foreign Fishing Vessels Act, 1905) by the nonenforcement of the first part of section 1 and the whole of section 3.

In return for these concessions the American Government consented—

1. To advise American fishermen to obey the law of this land and "not to fish on Sunday."

2. To direct that Americans should "comply with the colonial law as to reporting at customs-house and paying light dues when physically possible."

It is important to note at this point that prior to the year 1905 the Americans had always entered at the customs and paid light dues and had not fished on the treaty coast in contravention of the Sunday law.

The entirely one-sided nature of the agreement will be thus apparent to this House.

A few years ago President Roosevelt, whose high ideals of public and private duty and service have won for him the admiration of the

best men the world over, made a demand in favour of what he termed "a square deal all around." Now, that is precisely what the government of this colony has been contending for, and it is precisely what has not been experienced. There has not been "a square deal all around," but the correspondence published for the information of the Imperial Parliament, which I have tabled, only reveals this in part. This government requested that the whole of the correspondence in relation to the *modus vivendi* be tabled, but His Majesty's Government have not deemed it expedient that such should be done. In order, however, that this House should arrive at a proper understanding of the matter, I shall, with the aid of the notes that I have made, outline what has really transpired.

The origin of the *modus vivendi* may be found in the speech with which his excellency the governor opened this House in March, 1905, which was his ministers' declaration of policy. I have already quoted the paragraph of that speech which was a notice to all parties concerned of the intention of this government to discontinue to American fishermen the privileges which had been gratuitously extended to them for a period of fifteen years, and to confine them to their strict rights under the Treaty of 1818.

Following upon this notice was the introduction of the Foreign Fishing Vessels Act of 1905, the main object of which was to supply defects in the Bait Act of 1887 and enable the government to rigidly enforce it against foreign fishermen.

In the month of October, 1905, American fishing vessels commenced to put in an appearance on our coast, and very soon afterwards most misleading reports as to the conduct of the fishery were sent in to the American Government. Where they were sent from or who they were sent by I am not prepared to say, for I do not know. I do know, however, that they were communicated to Sir Mortimer Durand, the British ambassador at Washington, by the United States Government, and by him to the government of this colony, under date 13th of October, 1905. The character of the complaints will be seen on reference to the correspondence which has been tabled. They were entirely fictitious and unwarranted.

On the 20th of October, 1905, this government forwarded a reply, which has not been published, expressing their surprise that His Majesty's ambassador had been misinformed as to the attitude of the government of this colony towards American fishermen, inasmuch as they were aware that representatives of the American Government on board the American cruiser *Grampus* had been for some time, and were then, at Bay of Islands, and therefore could not but be fully cognizant of the fact that there had been no attempt whatever on the part of the government of this colony or the people of the colony to interfere with the rights of American fishermen under the Treaty of 1818.

A few days later the complaints took on a more definite form, and on the 25th of October a telegram was received from the Secretary of State asking "for what purpose this government had required United States vessels to produce United States fishing licenses, why United States vessels were required to obtain licenses from this government, and by what law and in what circumstances to enter and clear at customs-house." On the following day, the 26th, a reply was sent to these queries:

1. That the government of this colony had not required United States vessels to produce United States fishery licenses.

2. That United States vessels had not been required to obtain licenses from the government of this colony.

3. That in respect to entering and clearing the government of this colony considered that under the customs act, 1898, particularly section 22, 61 Vic., cap. 13, which provides that "the master of every vessel coming from any port or place out of this colony, or coastwise, and entering any port in this colony, whether laden or in ballast, shall go without delay, when such vessel is entered or moored, to the custom-house for the port or place of entry where he arrives and shall make a report in writing to the collector, or other proper officer, of the arrival and voyage of such vessel," etc., United States vessels are not exempt, and that neither are they exempt by the Convention of 1818. They submitted that when the sovereign power granted fishing privileges to the United States under the said convention it retained its inherent rights of sovereignty, such as the right to enforce the treaty within its own dominion, and to make and enforce all laws not inconsistent with the same; that one of the inherent rights of sovereignty is to prevent smuggling and crimes of all kinds; that the government, by virtue of the constitution granted to them by His Majesty, is the paramount power within the 3-mile limit of the coasts of the colony, and that it is their inherent right to decide what measures shall be adopted to protect the revenues of the colony from smuggling, and that one of the measures adopted is the obligation of all vessels to enter at the custom-house.

They pointed out that the correctness of this position was not questioned by American fishermen until two days previous to the receipt of the telegram from the Secretary of State, when the masters of the United States schooners *H. M. Stanley*, *Senator Gardner*, *Tattler*, and *Maxine* refused to make a formal report to the subcollector at Bay of Islands, informing him that they were advised by wire while at Sydney not to do so. They further pointed out that in January, 1900, two United States schooners were fined, respectively, \$100.00 and \$180.00 for nonreport; that in June, 1902, two other United States schooners were fined, respectively, \$160.00 and \$100.00; but with these exceptions United States vessels had always entered and cleared at the customs. They concluded their reply to the Secretary of State by intimating that out of deference to the wish expressed by His Majesty's Government they would refrain from any action likely to cause friction with the United States; that up to the moment of transmitting this reply no steps had been taken to vindicate the law, but the government felt confident that His Majesty's Government would concur with the view that however embarrassing it might be the majesty of the law should be upheld by legal proceedings provided in such case.

On the same day, namely, the 26th of October, 1905, His Majesty's Government was advised that a formal notice had been handed to Inspector O'Reilly by agents of the United States vessels at Bay of Islands that "members of crews of American vessels whose homes were in the Bay of Islands, and who had been shipped in North Sydney, would commence on the following day to use certain boats and nets belonging to them, and then at their homes, in catching herrings for the said American schooners," which the government

regarded as a deliberate intention on the part of United States fishermen to aid and assist the subjects of His Majesty in evading or violating the statute law of the colony, namely, cap. 129, Consolidated Statutes, and regulations made thereunder, and His Majesty's Government were moved to notify the United States Government that should the violation be attempted the government of this colony would take all proper steps to prevent the same. On the following day a cable was transmitted to the Secretary of State in support of the position set up in the despatch of the previous day, and wherein it was contended—

1. That the government of this colony has complete authority in its own territory to carry out the Bait and Foreign Fishing Vessels Acts.

2. That the Foreign Fishing Vessels Act stipulates that any attempt "to engage any person to form part of the crew of the said vessel in any outport or on any part of the coasts of this island" shall subject the vessel to forfeiture.

3. That the employment, therefore, of the fishermen of this colony in catching herrings at Bay of Islands for Americans would be a violation of section 1 of said act.

4. That the said act further provides that no foreign fishing vessel shall enter the waters of this colony "for any purpose not permitted by treaty or convention for the time being in force."

5. That the employing, shipping, or hiring of the people of this colony by the United States fishing vessels for the purpose aforesaid is not permitted by treaty, and therefore amounts to a violation of the paragraph above quoted.

6. That the privileges granted to the United States under the Treaty of 1818 were to the inhabitants of that country alone, and the people of this colony who proceed outside the 3-mile limit and engage or hire themselves to catch herring for United States vessels are not *bona fide* inhabitants of the United States and therefore are not privileged by the Convention of 1818, nor does the mere hiring of themselves to the United States citizens exempt them from the penalties to be imposed upon British subjects for a violation of the law of this colony.

7. That the catching of herrings by men so engaged would be a clear violation of the Bait Act, which had been in force for many years, and they concluded this despatch by reiterating that, while out of deference to the desire expressed by His Majesty's Government that all possible cause of irritation and friction with the United States might be avoided, they felt that the daily violations of the laws of the colony by United States citizens, then in the harbours of the treaty coast, could not be longer permitted without the demoralization of the civil service of the colony and the engendering of disrespect on the part of the people of the colony for all constituted authority.

After the fishing season of 1905 had closed and the Americans had been permitted to do as they pleased, the correctness of this position, it will be found on reference to the correspondence tabled, was upheld by His Majesty's Government (see despatch, Foreign Office to the United States ambassador, of February 2, 1906) and was concurred in by the American Government, as will be seen on reference to the enclosure in Sir Mortimer Durand's despatch to Sir Edward Grey,

of date January 18, 1906, yet in the face of this His Majesty's Government subsequently receded from its position, and, ignoring the representations of this government, granted this privilege to the Americans by that special instrument known as the *modus vivendi*.

As I have stated, out of deference to the desire of His Majesty's Government the government of this colony refrained from enforcing the laws, and American fishermen openly and defiantly and with impunity violated throughout the season of 1905 the customs, revenue, and fishery laws of the colony. This government, having pointed out to His Majesty's Government what they regarded as both lawful and just, accepted the responsibility for the nonenforcement of the law against American fishermen, content to bear the embarrassment and censure that might attach thereto, in the hope and expectation that during the twelve months that would ensue before another fishing season came around diplomacy or a strict interpretation of American rights under the Treaty of 1818 by His Majesty's Government would lead to a recognition of the rights of this colony and of the validity and sanctity of its laws.

It is important to note at this point that ten months prior to the date when His Majesty's Government intimated to the United States Government its willingness to enter into a *modus vivendi*, it was in possession of the views of this government in respect to each privilege subsequently granted to the United States under that instrument.

By reference to the copy of correspondence presented to the Imperial Parliament, and which has been laid upon the table of this House, it will be observed that under date 18th of July last Sir Mortimer Durand, the British ambassador at Washington, forwarded a despatch to the Foreign Office covering two enclosures, being two newspaper clippings. These have a special significance. Enclosure 1 is a letter from Congressman Gardner, representative of the fishery interests of Gloucester, Massachusetts, to the Gloucester Board of Trade, dated July 7th, 1906, and published in the *Boston Herald*, of July 9th, in which he declared that he had received a letter from the Secretary of State of the United States, and that the "State Department held that local regulations (Newfoundland law) prohibiting purse seining is unreasonable as against American fishermen," and that if said fishermen undertook to exercise their rights in that way the State Department would do everything in its power to help them. It also dealt with the shipping of local fishermen. Enclosure 2 is an extract from the *Boston Traveler*, of July 9th, in which it was declared that "seining is in direct violation of the local law of Newfoundland, yet Secretary Root in his report is expected to say that not only have American vessels the right to seine along the treaty coast, but they will be protected in these rights. This winter the State Department will be represented in Newfoundland waters, but it will not be on the deck of a sailing vessel but a Government vessel of some kind, to see that the rights of American citizens are well looked after."

It does not appear from the published correspondence that these threats formed the subject of either enquiry or remonstrance, but it does appear that the United States Government pressed upon His Majesty's Government the demand for the right to use purse seines, and received the sanction of His Majesty's Government; and that the

United States naval tug *Potomac* was sent to Bay of Islands and remained there during the whole fishing season.

In the light of subsequent events it is not unreasonable to conclude that these two articles were intended to pave the way for what followed a month later, namely, the *modus vivendi*, which contained a complete surrender of the rights of this colony to regulate the conduct of its inshore fishery and abrogated the law of the colony in the interests of American fishermen.

The subjects of His Majesty have rarely had forced upon them greater humiliation. The process of humiliation could scarcely have been forced to a greater extreme than when the law respecting people of this colony, men who looked up to the flag that floats over them as the symbol of greatness, majesty, power, and justice, were compelled to witness foreign agents entering the coves, creeks, and harbours of this colony, collecting together the lawless ones to bid defiance to the laws of this colony, under the protection of H. M. S. *Brilliant*.

The question of the use of seines by Americans in the prosecution of the herring fishery had arisen the year previous, and under date 26th of October, 1905, the attention of His Majesty's Government was drawn to this matter. His Majesty's Government was then advised that this government proposed to prevent the use of seines by United States vessels as being contrary to the law enacted for the preservation of the fishery, and calculated to entail serious loss to the people of this colony by the barring of herring to the exclusion of our people. It was submitted that it could not successfully be contended that the Newfoundland law against seining is in any sense antagonistic to the treaty obligations of His Majesty's Government to the United States, which stipulates that the inhabitants of the United States have forever, "in common" with the subjects of His Britannic Majesty, the liberty to take fish of any kind on that part of the southern and western coasts of Newfoundland, as defined in the treaty; that as the prohibition of the use of seines applies equally to British subjects, who are obliged to conform thereto, it could hardly be successfully contended that United States subjects, who have the right to fish "in common" with British subjects, are exempt from such regulations as have been deemed necessary by the legislature of this colony for the preservation of the fisheries in the treaty waters. In reply to this representation this government was informed that the United States Government did not concur in their view as respects the use of seines.

An attempt has been made to justify what has been done on the ground that a majority of the fishermen of Bay of Islands were not in sympathy with the policy of this government. I deny this upon the authority of Fishery Inspector O'Reilly, who has informed the government that the great majority of the people of Bay of Islands and the west coast are in full sympathy with the government's policy. I deny it upon the authority of statistics, which show that out of more than 2,000 local fishermen that were engaged in the herring fishery during the past season only 640 shipped to American masters, and that number was obtained from various parts of the colony.

But suppose that the whole population of Bay of Islands were opposed to the policy of this government—could that form a justification for the *modus vivendi* and its accompaniments? Unless I am mistaken, the duty of the state in all circumstances is to look beyond

the individual or the section, and look towards the general advantage, and that it is the essence of statesmanship that burdens should be distributed and benefits shared, for the interests of all are interwoven. The policy of this government was in the interests of the whole people of this colony.

A perusal of the correspondence tabled will reveal the fact that the first intimation the government received respecting the *modus vivendi* was by a telegraphic despatch of date 8th August, from the Earl of Elgin to the governor of this colony, announcing that His Majesty's Government were then informing the United States Government that they were prepared to negotiate a provisional agreement dealing with the conduct of the approaching fishery, and requesting the governor of this colony to report whether his ministers had any suggestions to offer as to the nature of that arrangement. It will be observed that His Majesty's Government had pledged themselves to a *modus vivendi* dealing with the fisheries of this colony without first consulting this government; that it was only after this pledge had been given that this government was asked if it had any suggestions to offer. This was regarded by my colleagues and myself as a note of menace, and we, therefore, immediately transmitted a telegram to the Right Hon. the Secretary of State for the Colonies stating that a full reply to his telegraph despatch of the 8th August would be transmitted without unnecessary delay, and in the meantime we relied upon the assurance contained in Mr. Labouchere's despatch of the 26th March, 1857, that "the consent of the community of Newfoundland would be regarded by His Majesty's Government as the essential preliminary to any modification of our territorial or maritime rights;" and they assumed that His Majesty's Government would not submit any proposals to the Government of the United States that would be at variance with that engagement. What little effect this despatch had with His Majesty's Government I shall presently indicate.

It has been asserted in some quarters that unnecessary delay occurred between the receipt of Lord Elgin's cablegram of the 8th August and the government's reply thereto. If reference is had to Lord Elgin's cable despatch of that date it will be noticed that His Lordship stated that copies had been forwarded to his excellency the governor by last mail of communications that had passed between His Majesty's and the United States Governments in reference to the matter of the conduct of the fisheries. Before this government could intelligently deal with this important telegraphic despatch they had to await the arrival of the correspondence referred to. This was received by his excellency the governor on the evening of the 14th of August and was immediately sent by his excellency to me for the consideration of his ministers.

It proved to be Secretary Root's memorandum to the Foreign Office in which he put forward the conditions:

1. That there should be no interference on any grounds by officers of the Newfoundland government with American fishermen;
2. That the Convention of 1818 justifies no interference;
3. That the fishery laws of the colony are not binding upon United States fishermen; and
4. That American fishermen are not obliged to conform to our revenue and customs laws.

This important memorandum, and the telegraphic despatch of Lord Elgin of date 8th August which referred to it, were taken into consideration by Committee of Council the following day, and a full reply thereto was forwarded to his excellency the governor for transmission to the Right Honourable the Secretary of State for the Colonies that same evening, as follows:

“AUGUST 15th, 1906.

“The Committee of Council have had under consideration the telegram received by his excellency the governor from the Right Honourable the Secretary of State for the Colonies of date the 8th instant, together with his despatch, confidential, of the 6th instant, and its enclosure. They observe the contention of the United States Government and its request to His Majesty’s Government ‘to prevent any interference upon any grounds by officers of the Newfoundland government with American fishermen when they go to exercise their treaty rights upon the Newfoundland coast during the approaching fishery season.’

Ministers feel that the contention and the request can not but have been regarded by His Majesty’s Government as entirely unreasonable, and such as neither His Majesty’s Government nor the government of this colony can concur in.

The contention “that the Convention of 1818 justifies no interference, reasonable or unreasonable, with the exercise by America of the fisheries” in the waters of Newfoundland is equivalent to a declaration that 700 miles of the territorial waters of this colony were by that instrument reserved from British jurisdiction and set apart as an area within which American citizens were exempt from the operation of statute law and free to use any fishing implements, no matter how injurious, in the conduct of the fishery. In “the exercise by America of the fisheries” in the waters of this colony there have been in the past very grave violations of statute law, such as murder, assaults, robberies, and smuggling. The offenders were punished in accordance with the law relating to each particular offence, and this was a reasonable interference to which the United States Government now appear to take exception.

If it be stated in explanation that the contention only had reference to the fishery regulations now in force in this colony, ministers would observe that such regulations are as much the statute law as the chapters under which the above-recited offences were dealt with, and that they apply to all persons, irrespective of nationality, who operate the fisheries within the territorial waters of the colony.

These fishery regulations were adopted by the legislature with a view to the preservation and continuance of the fisheries.

Most of them have been in force for years, and their necessity is made evident by the fact that they have resulted from petitions to the legislature sent in by the fishermen of the colony, who were prepared to submit to restrictions and limitations being placed upon their own labor in order to secure a continuance of the industry upon which they solely depended for a livelihood.

That such fishery regulations or laws have heretofore been regarded by the United States Government as not only reasonable but desirable will appear on perusal of a circular that issued from the Department of State, Washington, to the collector of customs at Boston, dated the

28th March, 1856, and which was quoted in full by Lord Salisbury in his despatch to Mr. Hoppin under date the 3rd April, 1880.

The United States Government, as far back as that date (1856) ordered that it should be made known to the masters of fishing vessels that, as there were certain "acts of the colonial legislature, as also, perhaps, executive regulations, intended to prevent the wanton destruction of the fish which frequent the coasts of the colonies and injurious to the fishing thereon, it is deemed reasonable and desirable that both United States and British fishermen should pay a like respect to such laws and regulations which are designed to preserve and increase the productiveness of the fisheries on these coasts. Such being the object of these laws and regulations, the observation of them is enforced upon the citizens of the United States in a like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries neither party has yielded its right to civic jurisdiction over a marine league along its coast. Its laws are as obligatory upon the citizens or subjects of the other as upon its own."

The Committee of Council would also have reference to the despatch from Mr. Bayard, of the Department of State, Washington, to Sir Lionel West, bearing date 10th May, 1886, wherein Mr. Bayard stated: "Since 1818 certain important changes have taken place in fishing which have materially modified the conditions under which the business of inshore fishing is conducted, and it must have great weight in any present administration of the treaty." . . . "Everything will be done by the United States to cause its citizens engaged in fishing to conform to the obligations of the treaty and prevent an infraction of the fishing laws of the British Provinces."

Again, in a despatch from Mr. Bayard to Sir Lionel West of date 20th May, 1886, that gentleman stated that he was desirous that due and full observance should be paid by citizens of the United States to local laws and commercial regulations of the ports of the British Provinces. In view of the foregoing, and of the fact that the Government of the United States has long been aware of the necessity of reference to the colonial governments in matters affecting their inshore fisheries, the objection or the contention now set up by the United States is somewhat remarkable.

If the fishery regulations or laws of this colony had been so framed and executed as to make any discrimination in favor of British fishermen, or to impair the rights conveyed to the United States fishermen by treaty, then there would be sufficient justification for the position taken by the Government of the United States, the fishery granted to the United States under the Treaty of 1818 being a fishery "in common" with His Majesty's subjects.

It will not be disputed that British sovereignty on the treaty coast is limited in its scope to the extent implied by the words "in common;" but, on the other hand, it is submitted that if, as is the case, the fishery regulations or laws of this colony as framed and executed do not make any discrimination in favor of British fishermen, then the obligation on the part of United States fishermen to observe them, in common with His Majesty's subjects, attached from the date that the Treaty of 1818 came into force.

It has to be remembered that by the signing of the Treaty of 1818 Great Britain was not the recipient of sovereignty to which attached conditions. She was the possessor of prior existing sovereignty,

conveying to American fishermen a certain right of fishing in common with the subjects of His Majesty. It will hardly be disputed that in point of law fundamental rights connected with the said treaty are prior to and take precedence of derivative rights—in other words, that rights and sovereignty are superior to special rights granted from them.

It would be an inversion of this well-recognized principle to suppose that His Majesty's Government, in granting to American fishermen a fishery "in common" with British subjects, conceded any other fishery, much less an exemption from the laws governing the territory in which the privileges were to be exercised.

Even if the treaty were of doubtful meaning in respect of matters in dispute, the recognized principle of international law would demand that the doubt should be resolved in favour of the sovereign power. But it is submitted that Article I of the convention expressly recognizes the sovereign right of Great Britain to make and enforce laws in connection with the fishery that she had granted to the citizens of the United States of America, in common with her own subjects.

It would appear that the position now taken by the United States Government is that the fishery and other laws passed by the legislature of this colony and enforced by its officers are not binding upon American fishermen exercising in the waters of the colony their treaty rights.

This is the first time, so far as the Committee of Council is aware, that the right of the Newfoundland legislature to legislate for the protection of its fisheries and its revenues, and the validity of such legislation as against the citizens of foreign countries, has been called in question, and they feel sure that His Majesty's Government will not fail to point out that such legislation, unless it is disallowed by His Majesty, becomes part of the law of the Empire.

While it is the first time in the history of this colony that this position has been set up, we have evidence that it was more than once advanced by the United States Government in relation to Canada.

In a report by the late Sir John Thompson, Minister of Justice of Canada in 1886, it is stated as follows, namely:

"The efforts made on the part of the Government of the United States to deny and refute the validity of colonial statutes on this subject (fisheries) have been continued for many years and in every instance have been set at nought by the imperial authorities and by the judicial tribunals." (See Enclosure 3 in despatch of Mr. Bramston to Sir Julian Pauncefoot, dated 1st December, 1886.)

The contention of the Government of the United States that the Convention of 1818 justifies no "unreasonable" interference with the exercise by Americans of the fisheries on the treaty coast is so self-evident that it was entirely unnecessary to advance it, unless it has been made to appear to the Government of the United States that the government of this colony has exercised or attempted to exercise "unreasonable" interference. It would be a matter of profound regret to ministers if any officer of the Newfoundland government attempted any "unreasonable" interference with Americans exercising their rights of fishery on the treaty coast.

Every possible precaution has been taken by the government of this colony to prevent such unreasonable interference, and during the last autumn fishery on the treaty coast, when public feeling ran exceedingly high on account of the unlawful procedure of American fishermen, which has formed the subject of previous Minutes of Council, dated the 26th and 27th October, 1905, no single case of "unreasonable" interference by either the officers of this government or the fishermen of the colony was reported to the government, or, so far as Committee of Council is aware, occurred throughout the whole season. They are aware that it was reported to the Department of the Secretary of State of the United States from some source unknown to them that there had been an "unreasonable" interference with the exercise by American citizens of their right of fishery, namely, that their nets had been destroyed by certain fishermen of this colony, but on hearing of this alleged offence a rigid inquiry was instituted, which resulted in a complete refutation of the charge, seven captains of American fishing vessels making affidavit before the commissioner, J. O'Reilly, J. P., that no nets or gear belonging to American fishermen were destroyed by Newfoundlanders, and that if any such damage was committed it was done "by the crews of the American vessels against one another, and not by Newfoundlanders." The said affidavits further set forth that American fishermen were treated "in the best possible manner by the people of Newfoundland, and were not interfered with in any way by them."

What is meant by the reference of the United States Government to Lord Salisbury's note to the United States Ministry, dated the 3rd of April, 1880, is not entirely clear, but if the United States Government desires it to be inferred that the words of Lord Salisbury limited the operation of the municipal law to that which was at the date of the signature of the Treaty of Washington in force the Committee of Council are of opinion that there is no justification for such an inference, for the words "in common" clearly meant that there was to be equal enjoyment of the fisheries, and there could not be equal enjoyment or fishing in common if American fishermen could prosecute the fishery on Sunday while British fishermen were prevented by municipal law from so doing.

The presumption that light dues were not levied in 1818 is no doubt correct, for the very good reason that the colony had not at that time, nor until a much more recent date, any system of marine lights on that coast. Such lights have, however, been established out of the revenues of the colony, and they have to be maintained from the same source.

It is therefore difficult to imagine that a foreign nation, actuated by a desire for justice alone, would contend that, while British fishermen are under the necessity of submitting to taxation for the maintenance of light-houses, foreigners should be permitted to participate in their benefits without contributing anything to the expense.

The Committee of Council noticed the reference to 15 George III, cap. 31, but they fail to observe in that statute any justification whatever for the position taken by the United States Government.

Since that statute was passed others have been enacted, approved, and enforced that rescinded the provisions referred to, and the latter enactments, the Committee of Council hold, are binding upon American citizens in common with the subjects of His Majesty, provided

that it can not be shown that any invidious distinction is drawn between the subjects of the two nations.

The revenue and customs laws were not adopted in order to increase the extent of the restrictions of the Treaty of 1818; neither were the fishery regulations framed to limit the privileges of American citizens.

They were adopted by the local legislature and approved by His Majesty's Government for the purpose of protecting the revenues of the colony and the fisheries of the colony. In enforcing these laws the government were only acting within their constitutional rights, and doing what the Government of the Dominion of Canada have been and are still doing; and in view of the injury which would result to the revenue and fishery interests of the colony if any facilities not expressly authorized by the Treaty of 1818 were conveyed to American fishermen, the Committee of Council deem it their duty, so long as the relations of Newfoundland with the United States are regulated by that convention, to insist upon a strict observance of its provisions in this respect.

The real source of the difficulty that has arisen is well understood; it is to be found in the irritation that has taken place among the fishermen of Gloucester on account of the termination by the government of this colony of the privilege of purchasing bait fishes—a privilege which was gratuitously permitted to them for the past fifteen years in anticipation of the ratification of a trade convention negotiated in 1890, then approved by the Government of the United States, and a second time approved in 1902.

This government has given indisputable proof of its earnest desire to cultivate and extend commercial relations with the United States, and it is assuredly from no fault on the part of this government that the conduct of the fisheries has now been relegated to the Convention of 1818.

In view of the rejection by the United States Senate of the fishery arrangement between this country and the United States, which was approved by the late Secretaries of State (Blaine and Hay) on behalf of the Government of the United States, it is not unreasonable that the colony should insist upon the rights secured to her by treaty and withhold those privileges which were freely and gratuitously extended to United States fishermen for the past fifteen years until that arrangement is confirmed.

The exercise of such claims as those that are now set up by the United States Government, namely, (1) exemption from the laws of this colony or from their enforcement by officers of the Newfoundland government, and (2) the use of fishing appliances, such as seines, which is prohibited in the waters of this colony, would involve in their consequences the deprivation of the people of the colony of a valuable maritime industry, the ultimate extinction of a present source of wealth to its people, and the virtual transfer of the sovereignty within certain territorial waters of the colony to a foreign power.

For more than a century this treaty coast was barred to British enterprise by an anomalous and intolerable condition of affairs that arose out of French claims, and it was only within the last two years that the colony was relieved from that condition. If the claims now

set up by the United States Government are acquiesced in, the latter condition of things will be worse than the first.

Against any recognition of such claims the Committee of Council respectfully and earnestly protest, and they can not be consenting parties to any relaxation of the statute laws of the colony in favor of American citizens who come to the treaty coast to exercise in common with the subjects of His Majesty a right of fishery.

They would strongly deprecate any provisional arrangement, such as is suggested by His Majesty's Government in the despatch under reference, which would relieve American citizens of a proper recognition of these statute laws. It is submitted that the interests of the Empire, and not those of Newfoundland alone, require that the right of sovereignty within its own dominion should be maintained inviolate, and the committee of council can not accept the view that any foreign power has a status or consultative claim in the matter of the framing, or adoption, or the carrying out of laws for the government of any portion of this colony.

The quotation from the speech of the premier of this colony, contained in Mr. Root's communication to Mr. Whitelaw Reid, of date 30th June, 1906, is wrongfully applied, and this will be immediately apparent to His Majesty's Government on a perusal of the said speech. Up to the date of the approval of the bill therein referred to, American fishermen, by the courtesy of this government, were permitted to freely purchase bait supplies all round the coast of this colony. This was a privilege gratuitously extended to them for fifteen years, dating from the signing of what is known as the Blaine-Bond Convention of 1890.

The premier's remarks had reference only to the determination of the government of this colony to terminate that privilege and to confine American fishermen to such rights as they possessed under the Convention of 1818.

It is observed that the closing paragraph of Mr. Root's communication aforesaid has reference to the foreign fishing vessels act of 1905.

At the instance of His Majesty's Government that act was amended during the present year, and in order that there shall be no misunderstanding as regards the intention of the legislature of the colony, and to prevent such a complaint as that contained in Mr. Phelps' despatch to Lord Rosebery of date 2nd June, 1886, that restrictions were about to be enforced without notice, the Committee of Council would advise that a proclamation do issue bringing into operation the Foreign Fishing Vessels Act of 1906.

They believe that its early issue will operate as a deterrent and prevent the necessity for that interference by officials of this government that the United States Government evidently anticipate."

His excellency the governor most promptly advised the Secretary of State for the Colonies of the receipt of this Minute, and intimated that a copy would be forwarded at the earliest opportunity.

On the 17th of August his excellency the governor received a cablegram requesting a summary of the Minute, and this was forwarded by his excellency, as will appear on reference to the correspondence, on the 19th of August.

It will be observed, then, that no unreasonable delay occurred in formulating a reply to the Secretary of State's despatch of the 8th August or in transmitting it.

This Minute called forth a cable despatch from the Secretary of State under date 3rd September in which he expressed "much disappointment at the attitude assumed by this government, and the opinion that this government failed to appreciate the serious difficulty in which their policy had placed both them and His Majesty's Government." They were reminded of Lord Kimberly's speech in the House of Lords in 1891 when discussing the course taken by Lord Salisbury's Government on the French shore question, and were informed that His Majesty's Government had decided to act on the principle indicated in Lord Kimberly's remarks and were accordingly proposing to the United States Government a *modus vivendi* in which the Foreign Fishing Vessels Act, passed by the legislature in 1906, was to be held in abeyance; the first part of section 1 and the whole of section 3 of the Foreign Fishing Vessels Act, 1905, were to be held not to apply to United States fishing vessels, and the payment of light dues was to be waived. On the other hand, the United States vessels should report at customs on entering and clearing, and United States fishermen were to comply with the colonial fishery regulations. It was hoped that the United States would accept these proposals, but the Secretary of State wished to warn this government that some further concessions might be necessary. It will be seen later that the United States Government culled from this proposal everything that was advantageous to them, discarded what was not, and then demanded and received far greater privileges.

There was also a second despatch received from the Secretary of State for the Colonies under date 3rd September, in which His Majesty's Government requested to be informed "whether this Government, in the event of negotiations for a *modus vivendi* breaking down, would be prepared to indemnify His Majesty's Government against any claims for compensation that might be preferred by the United States Government, and which it might not be possible, consistent with a fair interpretation of treaty rights, to avoid; also, whether in the event of a reference to arbitration becoming, in the opinion of His Majesty's Government, necessary or desirable, this government would agree to such reference and undertake to meet the expenses of arbitration and pay the award, if any."

In reply to these despatches, under date 5th September, this government regretted to observe that their Minute of the 15th ultimo had been received by His Majesty's Government with much disappointment. They had hoped that the reasonableness of the position they set up and the argument adduced in support of the same would have found favour with His Majesty's Government. They could not conceive how their policy in respect of American fishermen visiting the coast of this colony in quest of bait fishes, outlined in the Foreign Fishing Vessels Act of 1905, could have placed His Majesty's Government in any serious difficulty, for it involved no breach of any treaty obligation, neither did it interfere with any rights heretofore exercised by American citizens under the treaty. The policy that they had adopted was intended to prevent the sale of bait fishes to American vessels by fishermen of this colony, and to prevent said fishermen from assisting the crews of American vessels in catching such fishes; to enforce the revenue and customs laws so as to prevent smuggling; and to secure compliance with the colonial fishery regulations that had been framed with a view to the protection and con-

tinuance of the fisheries. With regard to the prohibition of the sale of bait fishes to American vessels and of the capture of such fish by the fishermen of this colony, when intended for sale to foreigners, this government observed that the principles involved in such restrictions were approved by His Majesty's Government in 1887, when the Bait Act came into operation, and the principle had been carried into practice for many years against the subjects of France who visited the coasts of this colony to engage in the fisheries, exception only being made in certain localities when it was made manifest to the government that an injury would accrue to the fishermen of this colony by a strict enforcement of the act. The revenue and customs laws were ever enforced against American vessels entering the territorial waters of the colony to engage in its fisheries up to last year, when for the first time the captains of American vessels objected to complying with these laws, and out of deference to the wish expressed by His Majesty's Ministers this government abstained from enforcing them. Up to 1905, with but few exceptions, American vessels had conformed with our fishery regulations, and, as had been pointed out in a previous Minute of Council, the State Department at Washington by official instruments had enjoined on the United States fishermen the duty of respecting these regulations. It was submitted, therefore, that there was nothing in the policy of this government that was new or novel, or that should occasion difficulty or embarrassment to His Majesty's Government. This government further pointed out that the Foreign Fishing Vessels Act, 1906, which was passed in order to meet the views of His Majesty's Government in respect to sections 1 and 3 of the act of 1905, as well as to enable the government of this colony to restrain the fishermen of this colony from engaging themselves to Americans to catch bait fishes, would, by being brought into force by proclamation, remove that which appeared to be the principal, if not the only, objection to the 1905 act, and obviate the necessity of the proposed *modus vivendi*, the main provisions of which, as set forth in the despatch from the Secretary of State of the 3rd September, dealt with sections 1 and 3 of the 1905 act.

This government further pointed out that the colony had never exacted duties in respect of goods on board United States vessels necessary for the prosecution of the fishery and support of the fishermen during the voyages to and from the fishing ground, and neither was any such action contemplated. It was respectfully submitted that the extract from Lord Kimberly's speech in the House of Lords in 1891, justifying the *modus vivendi* with France was scarcely applicable to the case under discussion. Lord Knutsford, in introducing that measure, and Lord Kimberly, in supporting the same, had set forth that it was impossible to avoid such legislation, "first and principally because it had been discovered that in fact that there existed at the time no lawful mode of enforcing His Majesty's treaty obligations in Newfoundland," the act which gave the necessary power having been allowed to lapse. Further, the right of British subjects to erect permanent structures on the treaty shore had been questioned. Great excitement and bad feeling had been aroused by the removal and destruction of such properties, and it was by reason of these circumstances that the *modus vivendi* of 1891 was regarded by both political parties in England as absolutely

necessary. This government pointed out that no such condition of things appertained in the case under discussion, the real questions at issue being (1) as to the right of the inhabitants of the United States to purchase bait fishes within the territorial jurisdiction of this colony, and (2) as to the right to engage people of this colony to procure such supplies for them. There was, in the case under discussion, no question of the lapse of imperial authority to enforce treaty obligations, no question as to territorial rights, nor any excitement or bad feeling in connection with the conduct of the fishery, such as was held to warrant the *modus vivendi* of 1891. This government assured His Majesty's Government that it was exceedingly anxious to assist the efforts of His Majesty's Government in obviating the difficulties and dangers they considered were to be apprehended in the course of the approaching autumn and winter fishery, and that having full knowledge of the local conditions which it was impossible for His Majesty's Government to possess, it was considered that such assistance could be best rendered if they were empowered to call into force the Foreign Fishing Vessels Act of 1906, which would convey to them the authority to deal with the fishermen of the colony as they could not do under previous laws. The government further intimated that if His Majesty's Government would consent to the Foreign Fishing Vessels Act of 1906 being proclaimed and decided that the government of this colony could be justly held liable for an arbitration which in the opinion of His Majesty's Government might be rendered necessary by the ambiguity of a treaty that this colony is in no way responsible for, then the Committee of Council would consider the question of such liability, as well as that of any damages arising out of the ambiguity of the treaty and that might accrue from the enforcement of the Foreign Fishing Vessels Act of 1906.

In drafting this reply I did not fail to recognize that it must be admitted as a general principle that existing treaties ought to be strictly construed, and that this colony would only have the right to apply for redress if we could establish that Americans had exercised privileges that the Treaty of 1818 does not justify.

Nothing further was heard from the Secretary of State for the Colonies until the 13th of September, when a cablegram was received by his excellency the governor informing him that the proposal of a *modus vivendi*, including the suspension of the Foreign Fishing Vessels Act of 1906, had been made to the United States ambassador on the 3rd of September. To this communication the following reply was transmitted by cable the following day, viz:

"That the government had learned with profound regret that without reference to this colony His Majesty's Government had proposed to the United States ambassador as one of the terms of the *modus vivendi* the suspension of the Foreign Fishing Vessels Act of 1906, which was only adopted after consultation with His Majesty's Government and with a view mainly to enable the government of this colony to deal with local fishermen and to secure the peaceable conduct of the fishery during the approaching autumn. They submitted that any arrangement embracing the suspension of that act interfered with the internal affairs of the colony, and would therefore be a violation of the pledge furnished by Lord Salisbury through the British Parliament on May 5th, 1891, during debate on the Newfoundland fisheries bill, to the effect that the government of this colony

possessed unlimited power to deal with its internal affairs. They had hoped and expected that if a *modus vivendi* were proposed to the United States Government a full text of the same would have been submitted and thus have afforded an opportunity for suggestion or remonstrance. The reasonableness of this expectation, they also submitted, was warranted by the statement of Lord Salisbury in debate on Newfoundland fisheries bill, April 28th, 1891, and they concluded by stating that the suspension of the Foreign Fishing Vessels Act of 1906 rendered them entirely powerless to carry out their fishery policy."

On the 19th of September a cablegram was received from the Secretary of State for the Colonies stating that the United States ambassador had presented a memorandum on the subject of the *modus vivendi*, expressing appreciation of the readiness of His Majesty's Government to waive the Foreign Fishing Vessels Bill of 1906, and pointing out that this and other restrictive legislation had compelled American fishermen to use purse seines; acknowledging the cordial disposition evinced by the offer of His Majesty's Government not to apply the first part of section 1 and the whole of section 3 of the act of 1905, stating that the Americans would gladly pay light dues if not hindered in their rights to fish, and were not unwilling to comply with customs regulations when physically possible to do so, but that it was sometimes physically impossible to break through ice for that purpose; that the United States Government were convinced that purse seines were no more injurious to common fishery than gill nets, and that the small amount of purse seining could not materially affect the fishery for the season; besides, a number of American fishermen had already sailed with purse seines, and others had provided themselves with them; that the use of purse seines was not the free choice of American fishermen, but that they had been driven to it by local legislation." His Majesty's Government strongly urged the acceptance of this solution, intimating at the same time that they proposed to consent to the use of purse seines. In reply to this a cablegram was transmitted to the Secretary of State the following day that for reasons which had been fully set forth in previous despatches this government regretted its inability to become consenting parties to the *modus vivendi* with the United States Government; that they entirely dissented from the views expressed by that Government in respect to the use of purse seines and the effect of the same upon the herring fishery. This was followed the same day by a lengthy and comprehensive Minute which dealt with the memorandum of the United States ambassador communicated to the Foreign Office under date 11th July. This memorandum has not been published, nor has my reply thereto, and I am precluded from tabling the same.

The statement that it is sometimes impossible for American ships to break through the ice for the purpose of reporting at customs is an absurdity, inasmuch as American vessels do not come upon this coast to engage in the fishery when the ice is upon the coast, and, as a matter of fact, as soon as there is evidence of ice presenting an obstacle to their progress American vessels quit these shores.

The statement that purse seines are no more injurious than gill nets is equally preposterous, as is evidenced by the fact that their use by Americans in connection with the mackerel fishery is well known to

have very seriously injured that fishery and their use upon the Canadian coast has been prohibited by the Dominion Parliament for years, owing to their injurious effect upon the fisheries.

On the 29th of September, the Secretary of State intimated to his excellency the governor that His Majesty's Government were much disappointed by this reply, and felt that there was no alternative to the course indicated in his telegram of the 19th instant, and that the United States ambassador was informed accordingly on the 25th September "that His Majesty's Government consent to the use of purse seines, and at the same time express the hope that recruiting just outside territorial waters would not be resorted to this year."

On the same date a cablegram was forwarded from this government to the Secretary of State, informing him that an American schooner had arrived at Bay of Islands equipped with purse seines and had declined to pay light dues, and requesting that this government might be informed promptly as to the exact position of affairs, and whether they were free to enforce the customs and fishery laws of this colony against American fishermen. To this the reply was received, under date 1st October, that "an answer would be given as soon as possible."

On the 4th October a cablegram was forwarded to the Secretary of State by his excellency the governor advising him that this government were anxiously awaiting a reply to their communication of the 29th ultimo, and in which they strongly deprecated any arrangement consenting to the use of purse seines by American fisheries and the engagement of Newfoundland fishermen to work for Americans in the conduct of the fisheries of the colony, and they concluded by praying that His Majesty's Government would permit the proclaiming of sections 6 and 7 of the Foreign Fishing Vessels Act of 1906. On the 6th of October the Secretary of State cabled that His Majesty's Government had concluded a *modus vivendi* with the United States Government, and that its terms were embodied in a note from the United States ambassador as follows:

("Mr. Whitelaw Reid to Sir Edward Grey.")

"LONDON, October 6, 1906.

"SIR: I am authorized by my Government to ratify a *modus vivendi* in regard to the Newfoundland fishery question on the basis of the Foreign Office memorandum, dated the 25th ultimo, in which you accept the arrangement set out in my memorandum of the 12th ultimo, and consent accordingly to the use of purse seines by American fishermen during the ensuing season, subject of course to due regard being paid in the use of such implements to other modes of fishery, which, as you state, is only intended to secure that there shall be the same spirit of give and take, and of respect for common rights between the users of purse seines and the users of stationary nets as would be expected to exist if both sets of fishermen employed the same gear.

"My Government understand by this that the use of purse seines by American fishermen is not to be interfered with, and the shipment of Newfoundlanders by American fishermen outside the 3-mile limit is not to be made the basis of interference or to be penalized; at the same time they are glad to assure His Majesty's Government, should

such shipments be found necessary, that they will be made far enough from the exact 3-mile limit to avoid any reasonable doubt.

"On the other hand, it is also understood that our fishermen are to be advised by my Government, and to agree not to fish on Sunday.

"It is further understood that His Majesty's Government will not bring into force the Newfoundland Foreign Fishing Vessels Act of 1906, which imposes upon American fishing vessels certain restrictions in addition to those imposed by the act of 1905, and also that the provisions of the first part of section 1 of the act of 1905, as to boarding and bringing into port, and also the whole of section 3 of the same act, will not be regarded as applying to American fishing vessels.

"It also being understood that our fishermen will gladly pay light dues if they are not deprived of their rights to fish, and that our fishermen are not unwilling to comply with the provisions of the colonial customs law as to reporting at a custom-house when physically possible to do so.

"I need not add that my Government are most anxious that the provisions of the *modus vivendi* should be made effective at the earliest possible moment. I am glad to be assured by you that this note will be considered as sufficient ratification of the *modus vivendi* on the part of my Government.

"I have, etc.,

(Signed)

"WHITELAW REID."

On the 11th this government transmitted a despatch to the Secretary of State by cable in which they desired to record their regret that His Majesty's Government had seen fit to ignore their representations and entreaties, and to conclude an arrangement which, they submitted, was subversive of the constitutional rights of the colony and calculated to work severe injury to the fisheries of the colony. They intimated that they had to regard with alarm the consent of His Majesty's Government to an arrangement which was apparently intended to override statutes that had received the royal assent, and they expressed the hope that the arrangement was not beyond reconsideration by His Majesty's Government and that by annulling the same the colony might be saved from the humiliation and danger that threatened.

I desire it to be understood that when it was said that His Majesty's Government had ignored the representations and entreaties of this government, we were not unmindful of the fact that His Majesty's Government had given the legal and constitutional position set up by this government their careful attention, for it was with no small degree of gratification that they observed in the reply of His Majesty's Government to the note of the Secretary of State of the United States of date 19th of October, 1905, on the subject of the rights of fishery, that nearly every such position advanced by this government had been concurred in by His Majesty's Government and contended for as both right and reasonable and in no way inconsistent with the terms of the Treaty of 1818.

The representations and entreaties which were alleged in the Minute of Committee of Council of the 12th October last as having been ignored were:

(a) That no *modus vivendi* was necessary in order to obviate the difficulties and dangers which His Majesty's Government considered were to be apprehended in the course of the autumn fishery. This opinion was based upon a complete knowledge of local conditions

which it was absolutely impossible for His Majesty's Ministers to possess.

(b) Their representation that the only thing necessary to ensure harmonious conduct of the fishery was a proclamation bringing into force the Foreign Fishing Vessels Act of 1906, enabling this government to deal with local fishermen.

(c) Their guarantee in respect to the peaceable prosecution of the fishery if such proclamation issued.

(d) Their earnest protest against the use of purse seines, as instruments calculated to destroy the herring fishery on that coast and to deprive the people resident of a valuable maritime industry.

(e) Their earnest entreaty that His Majesty's Government would not concede to United States fishermen a right to hire local fishermen, in violation of the statute law of the colony.

It may be stated that imperial or public expediency was a weighty factor and one that of necessity would be considered by His Majesty's Government.

Imperial or public expediency, under certain circumstances or conditions, may be a weighty factor in dealing with public questions, but I am unable to admit that such expediency could form sufficient justification for the abrogation of colonial statutes which had received the royal assent or for the inflicting upon a community any injury or loss without compensation.

If it were admitted for the sake of argument that from the standpoint of imperial or public expediency His Majesty's Government had some abstract right in their favour, such right, in my opinion, could not be properly pleaded as a justification for the course adopted in the matter under review. There are rights which, in their exercise under certain circumstances, are the most odious of all wrongs, and the most vexatious of all injustice. In this instance we have to ask ourselves, What were the circumstances under which this expediency arrangement was entered into?

(1) There had not been any breach of the peace committed by either American or Newfoundland fishermen.

(2) His Majesty's Government had received the most positive assurance from American fishermen themselves—in the form of affidavits made before a justice of the peace and of which His Majesty's Government was apprised by Minute of Council of date 15th of August last—as to “the friendly and generous disposition” displayed towards them in the year 1905 by the fishermen of this colony.

(3) Nothing had occurred during the past year to change that relationship.

(4) The government of this colony had guaranteed the “peaceable conduct of the autumn fishery” provided His Majesty's Government did not interfere with them in enforcing the statute law of the colony among the fishermen thereof.

It can hardly be seriously contended that in these circumstances there was anything to warrant an expediency arrangement such as the present *modus vivendi*. But, it may be answered, there were other circumstances appertaining, and they were:

(1) A demand from American fishermen to engage the people of this colony to catch fish for them in defiance of a statute law which makes it a penal offence for local fishermen to “take, catch, or haul, or to assist in taking, catching, or hauling bait fishes, without a license.”

(2) A demand from American fishermen that the people of this colony engaged by them should use purse seines in the conduct of the fishery in defiance of the statute law of the colony, which penalizes the use of such seines; and,

(3) The government of this colony had refused to be consenting parties to this proposed violation of the law.

It was under these circumstances, then, that His Majesty's Government decided to execute an instrument intended to override the decision of the legislature of this colony as well as the statute law of the colony, and it is under such circumstances as these that the rights which imperial or public expediency may be supposed to confer become the most odious of all wrongs and the most vexatious of all injustice.

Viewing the question from either a constitutional, legal, or expediency standpoint, it is difficult to conceive how any justification can be found for such an unexampled proceeding. If, however, for imperial or public reasons, which do not appear in the despatches, the demands of the United States Government, on behalf of the fishermen, had to be acceded to, then, I submit, justice required that the injury and loss about to be inflicted upon the people of this colony should have been provided for by a measure of compensation that would equalize the tax imposed by the United States Government upon British fish entering American markets. Had this course been pursued this colony would have been spared the painful humiliation to which it has been subjected and His Majesty's Government much adverse criticism and no doubt embarrassment, for under such circumstances as these this government would have felt themselves warranted in exercising the powers conveyed to them by Parliament and have limited the operation of the Bait Act for that season, so that it should not apply in the case of those local fishermen who might elect to engage themselves to fish for the Americans.

It has been exceedingly distasteful and painful to my colleagues and myself to oppose the action of His Majesty's Government, and it was only a firm belief in the truth of the maxim "He serves the King best who directs his endeavors to the preservation of the rights and privileges of the King's subjects" that nerved us for the performance of the very unpleasant duty that developed upon us as ministers of the Crown. We regard the *modus vivendi* as oppressive, as well as subversive of the constitutional rights of His Majesty's subjects in this colony. For us, therefore, to passively bear with oppression committed within the radius of our jurisdiction would be, in truth and reason, for this government to be an accomplice in the abuse.

We have to realize in the first place that the enforcement of the Bait Act against American fishermen, as it has been enforced against French fishermen, is required by the people of this colony at the hands of their representatives. The matter of a change in the policy of the government of this colony towards American fishermen was submitted to the people at the polls in my manifesto of 1904, and a mandate was received from the people to effect that change.

The law which we are required to enforce has been upon the statute book for nearly twenty years, and it was only relaxed for a time, in the case of Americans, because the Government of the United States of America had entered into a trade convention with His

Majesty's Government, on behalf of this colony, which provided for such relaxation and the ratification by the United States Senate of the said convention. The United States Senate having failed to ratify the convention, the obligation on the part of this government ceased and the law alluded to became active.

While it was and is quite competent for the government of this colony to suspend or limit the operation of the Bait Act, or if sufficient and extraordinary reasons could be adduced for the Imperial Parliament to suspend the operation of the act in defiance of this government, I humbly and respectfully hold that no power of suspension, limitation, or abrogation of this law, or of any law of this colony which has received the royal assent, is vested in His Majesty's Ministers, or even in the Crown itself, and therefore if the *modus vivendi* "pledges His Majesty's Government to the government of a foreign power" in the matter of such suspension, limitation, or abrogation, it is an illegality to which His Majesty's ministers in this colony can not consent to become parties.

The Bill of Rights—"An act declaring the rights and liberties of the subject"—very clearly sets forth:

"That the pretended power of suspension of laws, or the execution of laws, by royal authority without the consent of Parliament is illegal."

I can well believe that the proceedings upon which this government have entered may prove very embarrassing to His Majesty's Government, but while I sincerely regret that any action of ours should occasion such embarrassment, or even contribute towards the same, I can not conceive that it would have been consistent with our duty to abstain from what we regard as a proper course on that account. One fact is clear and indisputable. The embarrassment that is occasioned, or that will be occasioned, is not by reason of the wrongdoing of this government. On the contrary, they have endeavored to the utmost of their ability, consistent with their sense of duty to those they represent, to prevent it, by faithful representation, by humble and respectful protest, but they have failed. If His Majesty's Government have acted justly towards this people within their powers, then no embarrassment can possibly ensue from the action of this government. If, on the other hand, they have acted unjustly, or if there are reasonable grounds for concluding that they have so acted, then I am confident that the House will agree that the course adopted by this government was entirely proper. We entered upon this policy with no desire to embarrass His Majesty's Government, but with a firm resolve to assert the colony's rights. I feel certain that it will be admitted as a general principle that treaties ought to be strictly construed, and that the colony has a right to apply for redress if it can be established that the Americans are exercising privileges which the Treaty of 1818 does not justify and that no mere diplomatic agreement can give them; also, that when England has granted a constitution her honour is as much concerned in the maintenance of the constitution as in any other way. Both these questions are involved in the issue before us.

It will be noticed, on reference to the papers that have been tabled, that in his despatch of the 6th of October the Secretary of State expressed the desire that this government would issue instructions to the fishermen on the treaty coast to observe the *modus vivendi*. This

government did not give such instructions; neither did they promulgate the *modus vivendi* in any manner whatsoever. They did not do so because they had informed His Majesty's Government repeatedly that they could not be parties to it in any way. They declined to aid in carrying it out because they regarded it as unlawful and unjust—as an abrogation of our constitutional rights, and as overriding our law—and they proposed to test its validity in the supreme court of this colony. On the 25th of October His Majesty's Government were advised accordingly.

The embarrassment occasioned this government by the announcement of the conclusion of the *modus vivendi* was aggravated and greatly intensified by the remarkable conduct of the senior naval officer on this station. H. M. S. *Brilliant* arrived at Bay of Islands on the 19th of October, and the same evening a meeting of the fishermen in Birchy Cove was convened on board that ship. At that meeting the senior naval officer, Captain Anstruther, read to them the note of ratification of the *modus vivendi* and discussed an agreement that he proposed to bring about between the fishermen of the two nations. Subsequent to that meeting he visited the Canadian fishermen who were in the harbour, and afterwards Mr. Alexander, who was on board the U. S. naval tug *Potomac*, as the representative of the American fishermen, and drew up a form of agreement to which he obtained the consent of "all the commodores of the American schooners." This agreement was made without consultation with the governor of this colony, who, as commander-in-chief, is his superior officer, or directly or indirectly with this government. Under date 26th October, his excellency the governor communicated this fact to me, and I immediately entered a protest with his excellency against the conduct of the senior naval officer. I pointed out to his excellency the seriousness of the incident that was referred to, inasmuch as no authority was vested in Captain Anstruther to make any agreement such as he had ventured upon. He had not merely undertaken to interpret laws and treaties, but had assumed to make an arrangement or international agreement, as appeared on reference to the copy of the agreement which accompanied his excellency's communication. I pointed out further that, even if this arrangement could be regarded as declaratory of what is undoubted law, it would still be objectionable and improper when issued by a naval officer in his capacity as such, and especially so when proclaimed in a harbour where a stipendiary magistrate resides. It would be exceedingly difficult to find any precedent for such a remarkable procedure. The ratification of the *modus vivendi* had just been announced to us by His Majesty's Government; it had just been promulgated by the senior naval officer on this station, and no sooner was this done than without reference to either the governor or his ministers a new agreement, or international treaty, or *modus vivendi*, was entered into between His Majesty's senior naval officer on this station and the representative of the American fishermen at Bay of Islands. I pointed out to his excellency the governor that the agreement was invalid and incapable of enforcement, the governor in council, to whom under the law relating to marine and fisheries the legislature had deposited authority, being the sole constitutional power to regulate and control the fisheries of this colony. Naval officers on this station derive all the authority they possess in relation to

fishery matters in which American and Newfoundland fishermen are jointly concerned under the imperial statute of 1819, 59 George III, cap. 38, and any Orders in Council made thereunder. Neither in that statute, nor in any order of which I am aware, are naval officers empowered to make such an agreement as Captain Anstruther entered, and which was intended to limit and control the fisheries of this colony. There was no occurrence or sufficient ground to warrant the naval officer's action and adjudication, nor did it appear that there was any desire manifested by Americans to invoke his assistance in the maintenance of their treaty rights. The senior naval officer could not have been unaware that his action was calculated to affect the policy of this government, and to impair the government's influence and that of the representative of justice at Bay of Islands, in the carrying out of law and order on that coast, and it is surprising, therefore, that he should have entered upon such a course of action. This unique piece of naval statecraft fell through, apparently because our astute American friends recognized that it was incapable of enforcement. It might reasonably be supposed that the protest entered by this government with His Majesty's Government against these proceedings would have prevented a repetition of such conduct, but such was not the case, for a few weeks later we find this same naval officer, without reference to his excellency the governor of this colony or his ministry, addressing a circular letter to American, Canadian, and Newfoundland fishermen requesting suggestions from them "as to the best method of settling the fishery dispute between Newfoundland and the United States of America." By this conduct the senior naval officer on this station again trenchanted upon the rights essential to the security of colonial liberty and usurped functions that solely attach to responsible ministers of the Crown. It is difficult to conceive of a greater affront being offered to the governor of this colony or those who have the honour to be His Majesty's ministers in this colony.

The fishery for this season is now ended, and the wrongs that have been inflicted can not now be remedied, but we can at least hope that the recital of them, the exposure of them, will prevent a repetition. What I have written I have written, and reviewing it in the cold, black type of the papers that have been tabled I see no reason to regret one word of what has been recorded. In dealing with this question the government did what they believed was right, and ventured to point out respectfully but firmly what the country desired. We did not cloak or dissemble what we assumed it was for the interest of this people should be made plain. We set forth our views frankly and freely, feeling that many of the difficulties with which this colony has had to contend in the past might be traced to a want of frankness.

In the correspondence that has been exchanged I have had the hearty cooperation and loyal sympathy and support of my executive colleagues. We have done everything possible to uphold the dignity and the honour and the rights of those who sent us to this House to represent them. We could not do more. I want it to be distinctly understood that the difficulty that has arisen has not been by reason of any attempt on the part of this government to deny to Americans their full rights under treaty, for such an attempt has not been made. It has arisen out of the determination of this government to enforce those laws within the jurisdiction of the colony that have received

the approval of the Crown, and also through His Majesty's Government allowing the Americans privileges not possessed under treaty.

Am I to be told that under the Treaty of 1818 Americans are exempt from our local laws? If so, I deny it. I deny it upon the authority of those great American statesmen who fifty years ago gave it as an instruction to Americans exercising treaty rights on our coast "that the laws of this colony are as obligatory upon the citizens of the United States as upon our own people."

I deny it upon the authority of the late Sir John Thompson, statesman and lawyer, one of the ablest men that the Dominion of Canada has produced, who declared that "the efforts made on the part of the Government of the United States to deny and refute the validity of colonial statutes on the subject of the fisheries have been continued for many years, but in every instance have been set at nought by the imperial authorities and by the judicial tribunals."

I deny it upon the authority of the law officers of the Crown, Messrs. W. Atherton and Roundell Palmer, who on the 16th of January, 1863, declared as follows:

"That in our opinion inhabitants of the United States, fishing within waters in the territorial jurisdiction of the legislature of Newfoundland, are bound to obey and are legally punishable for disregarding the laws and regulations of the fisheries enacted by or under the authority of the provincial legislature. The plain object of the treaties above referred to was to put the inhabitants of the United States as regards the 'liberty to take fish' within the parts described of the British dominions on the same footing as 'subjects of His Britannic Majesty,' 'in common with whom,' under the terms of the treaty, such liberty was to be enjoyed. The enactments subsequently passed would not confirm the treaties and provide for the suspension during the operation of those treaties of such laws, etc., as were or would be inconsistent with the terms and spirit of the treaty, which 'terms and spirit' are, it appears to us, in no respect violated by the regulations *bona fide* made by the government for the conduct of the fishery and applicable to British subjects so employed."

I would also point out that by the conventions of 1890 and 1902 it was provided that Americans should only be subject to our customs and revenue laws and to such regulations as governed our local fishermen. Therefore, by necessary implication, these treaties concede the right of this colony to subject United States fishing vessels to our municipal law.

If for reasons that do not appear to us it was necessary to give way to the demands of the American Government, then ministers of the Crown in this colony should have been fully and frankly apprised of this fact and have been invited to repeat what they did last year at the instance of His Majesty's Government, viz, to refrain from enforcing the law. If we had declined to do this then it would have been within the competency of the Imperial Parliament, which is supreme throughout the Realm, on being satisfied of its necessity, to have suspended the law, but the course adopted by His Majesty's Ministers was most humiliating and unjust to the people of this colony, as well as a menace to every colony possessing responsible government. What we desire—what we expect—is a strict interpretation of the Treaty of 1818. No allusion is made in that treaty to the laws of nations as furnishing canons for its interpretation, and

it has therefore to be inferred that its meaning is to be gathered alone from its context and the circumstances that attended its adoption. On a former occasion I have contended that the Treaty of 1818 did not grant to American fishermen the right to take fish in the harbours between Cape Ray and Quirpon Islands, and I see no reason whatever to change that view. On the contrary, the more closely I have studied this question the more convinced am I as to the correctness of the position. I submit that if the question is to be decided on the words of article 1 of the Treaty of 1818 and without reference to what may be advanced as the conduct of the parties thereunder, and according to rules of construction which govern an English court of law in the interpretation of a contract, there is ample justification for the view that I have expressed, viz, that the article conveys no such right. There is a *prima facie* presumption that the word "coast" is used throughout the article in the same sense, and as, in the expression "coasts, bays, harbours, and creeks," it obviously does not include "bays, harbours, and creeks," it would follow that it does not include them when used in connection with Nfld. It may be observed that while the word is used in connection with Newfoundland in the singular, it is used in connection with the Labrador both in the singular and plural, and it is only as used in the plural that it is contrasted with "bays, harbours, and creeks." I am ready to admit that but for the difficulty arising from the expression "coasts, bays, harbours, and creeks" a right to fish on the coast would *prima facie* mean a right to fish on any part of the coast, including bays, harbours, etc., but it seems to me that the construction of the article evidences that there was abundant reason for inserting that expression, and I think that if the words of the article be taken by themselves the interpretation that I have placed upon them is free from doubt. It may possibly be held that the expression is ambiguous, and that when an ancient document is ambiguous the conduct of the parties thereunder must be referred to for the purpose of explaining the ambiguity, and that this principle is peculiarly applicable to treaties. Granting this to be correct, what has been the conduct of the parties? The conduct of the parties has been that the Americans (1) have been accustomed to visit the bays, harbours, and creeks of the west coast to obtain cargoes of herring, not by the capture of such fish by the crews of their vessels, but by purchase; their vessels have never been manned with the necessary crews or equipped with the necessary appliances to enable them to catch fish, and they have ever relied upon Newfoundland fishermen to supply for cash such bait fishes as they required. (2) Newfoundland fishermen have at all times supplied American vessels visiting the "bays, harbours, and creeks" for herring or other fish with the desired quantities for cash or barter.

If, then, I am correct in the opinion that the construction to be placed upon article 1 of the Treaty of 1818 is that which I have advanced, provided that the words of the article be taken by themselves, a reference to the conduct of the parties thereunder has only the effect of strengthening my position. Again, over one hundred years prior to the Treaty of 1818, namely, in 1713, Great Britain had entered into a treaty with France granting certain privileges of fishing upon the west or treaty coast of this colony. Subsequently,

in 1783, Great Britain entered into another treaty with France, known as the Treaty of Versailles, under which a change was made in respect to the localities in which the French might exercise a right of fishery, and in the declaration of His Britannic Majesty in respect to this Treaty of Versailles it was clearly stipulated that the French should not be interrupted in any manner by competition in the enjoyment of their fishery. The outer coast line referred to in the two treaties that I have mentioned is precisely that upon which fishing privileges were granted by His Britannic Majesty to the United States of America in 1818. But there is no question whatever but that the French exercise exclusive rights of fishery in many of the bays, harbours, and creeks which form the inner coast line. Following upon the declaration of the Treaty of Versailles they entered into those bays, harbours, and creeks and held possession of them to the exclusion of all parties up to two years ago, when they relinquished what they termed their rights for a consideration. Is it not probable that the Treaty of 1818 was worded as it is in order to avoid infringement of those French treaty rights and concessions?

May not this be the explanation of the distinction—so difficult otherwise to understand—made between the south coast, with the right to enter bays, harbours, and creeks to dry fish, and the western and northern coasts, with no such rights? Had it been otherwise, would not the framers of the Treaty of 1818 have included them together in one clause? They were unable to do this, it seems to me, because the British Government, having already contracted not to allow competition with the French on the western and northern coasts by British subjects, had no power to allow it to the inhabitants of the United States. They could give the right of fishing on the open coast, but could not grant it in the bays, harbours, and creeks where the French exercised their fishing, and where the fishery area being limited they would certainly have been interfering with the French, who claimed and exercised with the consent of the British Government a monopoly of the fishing therein. I have seen in one of the leading London reviews that an able writer has declared that but for a map which was put in by the Newfoundland government, during the proceedings of the Halifax Conference in 1876, my reading of the treaty might, perhaps, have stood. My answer to that is that if the Treaty of 1818 was expressly worded so as to exclude the Americans from the bays, harbours, and creeks of the west coast, no implied admission by the Newfoundland government at the Halifax Commission would have any effect, but the treaty would have to be rigidly construed in relation to the French rights. Viewed historically, it seems to me that the Americans were intentionally excluded from the bays, harbours, and creeks of the west coast, and that they never had any rights of fishing in either Bonne Bay, Bay of Islands, or Bay of St. George.

In order to discover what the rights of United States citizens under the Treaty of 1818 are, it may be useful to have reference to anterior records. Before the Revolution the inhabitants of all the British colonies in North America possessed, as a common right, the right of fishing on all the coasts in British North America. At the end of the Revolution and by the Treaty of Peace of 1783, which adjusted the boundaries between the dominions of the two powers, it was "agreed that the people of the United States shall continue to enjoy

unmolested the right to take fish of every kind on the Grand Banks and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish, and also that the inhabitants of the United States shall have the liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coasts, bays, harbours, and creeks on all other of His Britannic Majesty's dominions in America." (See article 3.) From 1783 until the war of 1812, between the two countries, citizens of the United States continued to enjoy the rights secured to them by the article which I have quoted. At the close of the war of 1812-15 the British Government took the position that in consequence of the war the fishery privileges granted to citizens of the United States, by article 3 of the Treaty of 1783, had become abrogated and that the citizens of the United States had therefore no longer the right to fish in any of the British North American waters. This led to the conclusion of the Treaty of the 20th of October 1818, article 1 of which defines the present fishing privileges of the citizens of the United States in the waters of this colony. The intent and meaning of that article may be gathered from the instruction which issue to the American negotiators of it.

On the 20th of July, 1818, Mr. Adams, Secretary of State for the United States, instructed Mr. Rush and Mr. Gallatin, the American negotiators, as follows:

"The President authorises you to agree to an article whereby the United States will desist from the liberty of fishing, and curing, and drying fish within the British jurisdiction generally, upon the condition that it shall be secured as a permanent right, not liable to be impaired by any future war, from Cape Ray to Rameau Islands and from Mount Joly on the Labrador coast, through the Straits of Belle Isle, and indefinitely north along the coast; the right to extend as well to curing and drying the fish as to fishing."

This instruction, I submit, clearly sets forth the demand of the United States, and leaves no room whatever for doubt but that the Treaty of 1818 was intended to conform to it and to the principles involved in it. If this is admitted, then the construction that I have placed upon article 1 of the treaty is the correct one.

I have seen an attempt made to argue that the terms of the Washington Treaty and the Treaty of 1818 were identical, and that the contentions and admissions of the British counsel acting on the Halifax Commission of 1877 must have an important bearing on the construction of the Treaty of 1818. I can not conceive how any such view can be seriously put forward. The Treaty of Washington was negotiated and entered into in order to secure to the contracting parties privileges in excess of those enjoyed by virtue of the Treaty of 1818. The Halifax Commission was an international arbitration convened to decide whether the United States had received a greater benefit under the Washington Treaty than had Great Britain. The British had claimed a large money consideration for privileges which they alleged the United States had enjoyed under the Washington Treaty in excess of what the British had. All kinds of loose arguments could be and were used by counsel on both sides, but surely it will not be seriously contended that the arguments of counsel before

the Halifax Commission can affect the interpretation of the Treaty of 1818. The lawyers engaged on that case were doing their best in the interests of their respective clients, and it is not improper or difficult to conclude that the respective counsel would have argued right opposite to what they did if retained by the opposite side. The Treaty of 1818 was one which gave foreigners certain rights on British soil, rights which should be strictly construed, and no admission, or statement, or argument used by counsel on the Halifax arbitration could, I submit, have the smallest bearing on the interpretation of the treaty.

The Treaty of 1818 defines four territorial privileges given by Great Britain to American citizens, viz:

(1) The liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands.

(2) To take fish on the western and northern coast of Newfoundland from Cape Ray to Quirpon Islands.

(3) To take fish of all kinds on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador to and through the Straits of Belle Isle, and thence northwardly and indefinitely along the coast.

(4) The liberty forever to dry and cure fish in any of the unsettled bays, harbours, and creeks on the southern part of the coast on Newfoundland above described, and on the coast of Labrador.

These words can not be twisted or turned into giving Americans the right to ship men, buy bait fishes, or trade in our waters. Such privileges were not included in the treaty and therefore expressly prohibited.

However, this question did not come into the recent dispute, and I only refer to it at this time to express the hope that when the question of the rights of American fishermen under the Treaty of 1818 is being determined, due consideration may be given by His Majesty's Government to the point that I have raised.

The Treaty of 1818, we may suppose, was made in the interests of the Empire. It certainly was not made in the interests of this colony. History records the severe criticism with which its terms were received at the time of its ratification. It was assailed with great force by the leading press of England, which declared that the imperial maritime interests of the British Empire had been sacrificed to America greed. Remonstrances and denunciations poured in from all the colonies concerned. A full account of the reception that attended its publication can be seen in Rush's work, entitled "Residence at the Court of London." It will be remembered that Richard Rush was at that time American minister to the Court of St. James, London, and consequently an eye-witness of all that happened in relation to the treaty, and therefore his account of its condemnation is all the more interesting. This colony could only protest when its rights were sacrificed in 1818. It can only protest to-day, when, added to that sacrifice, is the humiliation of the *modus vivendi* that has arisen out of it.

Are our protests to be in vain? Is British justice only extended to those whose numerical strength gives force to their appeal? These questions are suggested by the declaration of certain influential English journals, which, while supporting the attitude of this government in relation to the *modus vivendi*, declare that "federation with the

Dominion of Canada seems the only way out of the difficulty." A great dominion, they assert, if it "can not dictate to the Mother Country, is not likely to go down before the requirements of a foreign power, for a foreign power is hardly likely to press humiliation on a great dominion or to invite Great Britain to do this unpleasant work." What does this declaration mean? Does it mean that the treatment that has been meted out to this colony was intended as a compelling force towards union with the Canadian Dominion, or does it mean that by attaching ourselves to the five million people of the Canadian Dominion we can force justice from the Mother Country? I should regret exceedingly to believe that either is the correct conclusion, for both positions are entirely non-British.

Why should this colony be forced into a union that she considers would be incompatible? Why should she become absorbed if she prefers to retain her autonomy? If she takes a pride in her position as the oldest colony in the Realm, why should she be robbed of that pride? If she prefers to work out her own destiny under the genius of the constitution, why should she be thwarted in so doing?

Has Newfoundland shown herself to be unworthy of the constitution she enjoys? If she has, then there might be some excuse for pressure being brought to bear upon her to relinquish it. But has she shown such unworthiness? It will not be difficult to prove the contrary. For centuries the people of this colony have been handicapped by the operation of treaties along two thousand miles of her coast line—treaties made in the interests of the Empire—treaties that were oppressive at the time of their ratification, and that have become obsolete and doubly oppressive by reason of the altered circumstances of the times in which we live. The national bounties of France and the protective duties of America have placed Newfoundland in a most unfavourable position and subjected her to unfair competition. Hundreds of French vessels have come into our territorial waters and subjected our people to a species of competition in which the advantages were all on one side, yet in spite of this the manner in which she has extended her fisheries, the hardy, independent race she has reared upon her coast, the value of her shipping and of her exports, speak volumes for the enterprise and industry of her people. Wonderful as has been Canada's progress, Newfoundland is now keeping step with her. In the past six years Canada's commerce has increased 25 per cent; Newfoundland's commerce has shown an advance of 30 per cent within the same period. During the same period Newfoundland has had a yearly surplus of revenue over expenditure aggregating \$480,000. Twenty-eight per cent of that surplus has gone into a reserve account to meet unforeseen demands that may come upon the treasury through the stress of bad times, and 72 per cent of surplus has been returned to the people in additional grants for public works. During the same period the reduction of taxation has amounted to \$670,000. I know of no colony in the Empire that has displayed a more heroic policy in relation to railway enterprise, and I think I am correct in stating that, with the exception of Australia, the government of this colony has built and owns to-day more miles of railway according to population than any other part of the Empire. The credit of the colony abroad stands as high as that of the most prosperous colony of the Empire, and its securities are as eagerly sought after. From this brief summary I do not believe

that it can be successfully contended that we have shown ourselves unworthy of such privileges as we enjoy under responsible government.

Again, if there be advocates for a coercive policy being applied to this colony in respect to union with Canada, are they quite certain that the Government of the Dominion would take in an unwilling partner? I am quite certain that the present Government would not. Sir Wilfrid Laurier is far too able a statesman to admit within the circle of Canadian influence any element which would bring about discord. I also feel quite confident that if union ever takes place between this colony and the Canadian Dominion it will have to be a marriage of the affections. To attempt to force this colony into a union that she does not desire would be worse than useless. I do not believe that any such motive prompted the treatment of which we complain; neither do I believe that it is necessary for this colony to enter into union with Canada in order to obtain justice from His Majesty's Government. I prefer to believe that that great diplomat and statesman, Lord Dufferin, voiced the sentiments of every man worthy to be called a British statesman when, as Governor-General of Canada, he declared, in addressing the people of British Columbia:

"Your numerical weakness as a community is your real strength, for it is a consideration that appeals to every honest heart. Far distant be the day when [on] an acre of soil over which floats the flag of England mere material power, brute political preponderance, should be permitted to decide such a controversy as we are now discussing. Woe betide the government or the statesman who, because its inhabitants are few in number and politically of small account, should disregard the issue or carelessly dismiss the representations, however bluff, boisterous, or downright, of the feeblest of the distant colonies."

The great British statesman who uttered these words of wisdom and warning is dead, but the measure of justice that he contended for, I rejoice to believe, still lives. The manner in which the great journals the Empire over have taken up our cause declares to this effect.

There have been a few newspapers on the other side of the Atlantic that have described our conflict with His Majesty's Government as "much ado about nothing." The writers of such articles surely could not have understood the seriousness of the situation. There are 55,000 men, with their wives and children, in this colony whose daily bread depends upon the successful prosecution of the fisheries. The continuance of these fisheries depends upon the manner in which they are conducted, and therefore this legislature has from time to time passed laws to prevent the pollution of the waters of the bays, harbours, and coves around the coasts of this colony and of the Labrador; to regulate the seasons during which certain fish may be caught, and to determine the instruments of capture that may be employed by the fishermen. Within the fishery areas of this colony the Imperial Government has granted to the citizens of foreign nations (France and the United States of America) certain rights of fishing "in common" with British subjects. If the words "in common" meant anything, I submit they conveyed to foreigners the right to fish side by side with British fishermen within the prescribed areas set out in the treaty or grant, at the same seasons, with the same implements of capture, and subject to the same regulations. If this was not the meaning of the words then the foreign fishermen were free to destroy the

fishery by polluting the waters, by using improper instruments of capture, and by fishing at all seasons of the year. We can not conceive of a government consisting of sane men granting rights to the subjects of a foreign power to destroy the living of its own subjects and the food supplies of millions of other human beings. Yet that is the contention of the United States Government, and in that contention His Majesty's Government has at least temporarily acquiesced by ratifying the *modus vivendi*. The American Government have contended that under the Treaty of 1818 they are not subject to our fishery and municipal laws, and by ratifying the *modus vivendi* His Majesty's Government has not only temporarily approved that assertion but has attempted to protect the citizens of the United States from the consequences of a violation of our laws. Let us follow this contention to its logical conclusion, and not only must we look forward to the destruction of our west coast fishery, but to the Labrador fishery as well, and Americans have greater rights on the Labrador than they have on the west coast of this colony. Can any member of this house contemplate such a possibility without feelings of alarm? Can they regard the action of this government in relation to the *modus vivendi* as "much ado about nothing?" Would any section of the British press regard things in that light if the inshore fisheries of Great Britain were to be invaded by foreign fishermen who set the statute laws at defiance? I think not. The laws of this land when approved by the Crown are the laws of the Empire. It should not be forgotten that England's honour is as much at stake in upholding those laws as if passed by the Imperial Parliament.

England in the past has had to look to the fisheries of this colony as a nursery for her navy. Turn back to the record of the great naval struggles in which she conquered! Appeal to the heroes of that great naval warfare which laid the foundations of that great Colonial Empire which has brought to England during the present century both wealth and power! Ask them who were the companions of their victories! The answer will come back through the centuries that Newfoundland fishermen sealed the proudest of their victories with their blood. England is looking to this colony for material for her navy. Seven years ago an appeal was made to the young fishermen of Newfoundland to enter her naval reserve. The appeal was answered with enthusiasm. Hundreds of brave young fishermen have pledged their lives to the Empire, and hundreds more are willing to do so. Be it known that this is the only colony of the Empire whose sons may be called upon by the Admiralty in time of war. I regret to learn that recently a large number of reservists decline to re-enroll. I do not know the reason for their so doing, but I can not imagine that the episode with which I have been dealing was calculated to inspire enthusiasm or to intensify the loyalty of the fisherfolk of Newfoundland.

It has been stated by His Majesty's Government that the *modus vivendi* is for one season only—a period sufficiently long for the operation of such an unprecedented and humiliating agreement. I think, however, that after this House has given consideration to the papers which have been tabled and to the circumstances to which they relate, it will be regarded as necessary that this humble and respectful address to the Right Honourable the Secretary of State for the Colonies do pass, praying that if the rights of this colony can

not be attained by diplomatic negotiation, then His Majesty's Government will proceed on a strict definition of the Treaty of 1818.

SPEECH OF M. P. CASHIN, M. H. A., ON THE MODUS VIVENDI, DELIVERED IN THE HOUSE OF ASSEMBLY, FEBRUARY 14TH, 1907.

[Extract from the St. John's (Newfoundland) Daily News, February 27, 1907.]

Mr. CASHIN. Before entering on the discussion of the question before the chair, he thought it his duty as leader of third party to welcome to its ranks Mr. Blandford, one of the members for Bonavista. Quite suddenly during this afternoon Mr. Blandford had joined his banner, and he was glad to welcome him. Dr. Lloyd, one of the members for Trinity, in his speech to-day proclaimed himself the only Englishman within these walls. Mr. Cashin was just as proud to proclaim himself the descendant of an Irishman, and as for the recent recruit to his party he judged from his spirited action and manly stand that he must be a countryman of his own. When the people of Bonavista sent Mr. Blandford to this house they thought him worthy to represent them here and he had asserted his independence even though he was going to vote for this measure, because in so doing he would vote according to his conscience. He, Mr. Cashin, from equally conscientious convictions, rose for the purpose of opposing the measure and hoped he would not stir Mr. Blandford's Irish blood by so doing. He, Mr. Cashin, had watched this particular measure since it came down to the house, and had wondered to himself what it was all about, and why such an outcry was made regarding it. He had seen the Government papers from day to day, prior to the opening of the house, intimating that something was going to happen, and that the Premier was going to talk for several hours on a situation never equalled in our history. But all that advertising for the past week had not the least effect on the electors of St. John's East and West, and did not bring even a corporal's guard to the gatherings for the Premier's promised big speech. He, Mr. Cashin, had his mind made up as to the wisest course to take in the matter in the interests of the Colony in general, and of the inhabitants of the district of Ferryland in particular. During this afternoon he had presented a petition signed by over a thousand fishermen of that district, praying for the abandonment by the Government of its hostile attitude against the Americans, and pointing out that the only sufferers so far by the attempt to injure the American fishermen were the people of the Southern districts of this Island, who added largely to their annual earnings by selling bait and shipping to the Americans. That petition set out that none of the promised benefits which the Government declared would follow the exclusion of the Americans had come to pass.

The people who were the sufferers by this policy had obtained no compensating advantages and the Americans had not been hurt, so that there was really no sense in keeping up this fishery warfare from season to season and injuring the country's best interest. He, Mr. Cashin, felt as the people of St. John's East and West felt, that all the trouble with which we were now faced, and regarding which the Government were making such a howl, had been brought about by the unwise policy of the Government themselves as he would

endeavor to show in the course of his remarks. Some seventeen years ago, in 1890, the Premier of this colony, then Colonial Secretary, went to Washington with the consent of his colleagues of that day and opened negotiations for a reciprocity treaty with the United States on fishery matters. That treaty we now know as the Bond-Blaine Convention. He came back with flying colors and proclaimed that this treaty was all ready to go into effect, but in a very few weeks it was found that our sister colony of Canada had resented this action and protested against a separate treaty by Newfoundland, insisting upon being made a party to that treaty herself, and the British Government, at Canada's instance, hung up that treaty, and it has been hung up ever since. Our Government, inspired no doubt by the present Premier, brought into this house a measure of retaliation by which the Canadian fishermen were required to pay a license fee to obtain privileges in our waters. They were practically forbidden to enter our waters, and every effort was made to exclude them, though at the same time the Americans were extended the hand of friendship and given every concession possible. Some of the Canadians very properly challenged the validity of this bluff law, and took the matter into our courts which decided that the law was worthless and compelled our Government to pay these people back their money, with heavy costs. The next stage was that after a few years the Premier of to-day was found to be plucking up courage enough to go back to Washington in 1902 and negotiate what is now known as the Hay-Bond Treaty, but this was not ratified by the American Senate, and when it was handed back to Newfoundland it was so altered that its own framers would not recognize it.

The Premier was forced to come home again, now, and admit that he had been left a second time, now by the fishermen of Gloucester, as he had been the first time by the fishermen of Canada. Then the Premier took it upon himself to punish the Americans as he had two years before tried to punish the Canadians. Simply because none of his pet schemes, (his Reciprocity Treaties) had been ratified he was determined that the Yankee fishermen would have to go. But he little thought the men he was undertaking to put out of business were men who know their own rights and how to maintain them. The position of affairs is simply this: For the past thirty years they have fished in amity and good fellowship side by side with our own people, spending their money liberally and abiding by our laws and providing an enterprise for hundreds of our people. Thirty years ago when they first appeared here in any number, their fleet was manned by Yankees, to-day their vessels have Newfoundland crews, men who could not make a living at home and were forced in order to support their families to seek a livelihood in foreign lands. Yet because the American fishermen would not consent to the Hay-Bond Treaty, Sir R. Bond passed the Foreign Fishing Vessels Act, though they have never injured our markets, nor interfered with the price of fish or unfairly competed with us in the principal industries by which we subsist. The Yankees agreed to go, but in going they said: We respect your laws and recognise your authority; we know what powers you have and that we cannot disregard them, but you on your part must remember that we have treaty rights in this colony, that these give us a right to fish on your West Coast on the same

terms as your own people, and we expect you to recognize our treaty rights just as we recognise your fishery laws. Accordingly they have come back to take advantage of their rights under the treaty of 1818.

When two years ago this policy against the American fishermen was first passed, it was not regarded with the same importance as it is to-day. The Yankees were told that the Newfoundland Government's definition of the treaty meant that they had certain privileges in our waters on the West Coast and on the Labrador, but were not to enter our bays, harbours and creeks, nor to take fish as they wish, but that the methods and gear by which they were to fish were to be regulated by us. The Americans refused to be bound by this construction of the treaty proclaimed, they never made any treaty with us, and recognized no right of ours to interfere with their fishing and appealed to the Imperial Government for its definition of the terms they possessed. For the last twelve months the American and British Governments have been discussing this question and endeavouring to reach an agreement, but as last fall's herring fishery was about to begin and quarrels might arise between the fishermen of both countries, and the negotiations were not completed they decided to make a *modus vivendi* for the herring fishing season this spring. The British Government argued reasonably enough that if the conditions existing had been borne for 20 or 30 years the continuance for another twelve months would not seriously injure anybody and it would insure peace during the fishing season and pave the way for a settlement before another year comes around. That really is the position here to-night. There is no great international and constitutional question involved as the members of this house have been told, nor does it involve any disloyalty to our island home to oppose this address to-night. He, Mr. Cashin, was as loyal to his native land as any man in this house and he saw no reason or justification for the arguments of the Government, that any man who opposed this address was false to the country or its welfare. His, Mr. Cashin's, knowledge might be limited, but that was the view he took of the matter. And he had before him the example of the Premier, who 20 years ago opposed the Bait act as strongly as he now advocated it. On this question of the bait act a great deal might be said. The house had been told by the Finance Minister yesterday that Newfoundland holds the key to the bait supply of the North Atlantic, but if that was so how did it happen that last spring many of our vessels had to go to the Magdalen Islands to procure bait? He, Mr. Cashin, would challenge Capt. Lewis to say if this was not the case.

Capt. Lewis said that only a few of our vessels baited there and the majority certainly on our coast.

Mr. CASHIN. Capt. Lewis's "few" might mean a great many, at any rate we know that in one day 150 vessels baited at the Magdalene Islands, and if we hold the key of this bait supply of the North Atlantic, why did our vessels have to go out of our waters to secure their supplies of bait? He had listened with patience to the clap-trap about the bait reserve of the North Atlantic, and might ask Mr. Jackman what has happened to the banking fleet of Placentia? Twenty years ago Placentia boasted of a fleet of thirty vessels. What has become of them? They are gone as well as the Frenchmen. Where are the forty bankers of the Southern Shore; the large fleet of Bay Bulls, Trinity, Catalina and Bonavista? Where are they all

gone? If we had a plentiful supply of bait these vessels would be bringing fish to our ports and enriching our sons. He might go further and say where are the crews of those vessels? They are the crews of the American vessels, our own sons, whom we are now fighting and depriving of privileges. He would ask Capt. Bonia if it were not true that his own brother, Capt. Joe Bonia, who was once commodore of the Placentia fleet, is now commodore of the Gloucester fleet? Speakers during the past two days have said that the French fishermen were paralyzed by the Bait Act. That is a mistake. The Bait Act has not as much to do with the downfall of St. Pierre as some people think. The French and Yankees cannot be compared. The former are our competitors in the European markets, while the Americans cannot get sufficient fish for home consumption. We may double them in foreign markets. The bulk of their catch is consumed in their own country, and their greatest difficulty is they are unable to supply the demand. It is contended by the Government that the operation of the present Act has greatly injured the catch of the American fleet, but the figures do not prove that. In 1904 the Grand Bank Gloucester fleet of 54 vessels caught 14,550,000 pounds of fish, the average catch per vessel being 162,000 pounds. In 1905 the catch was 14,000,000 pounds, but the fleet was two vessels short, this explains the slight reduction in the catch, though the average per vessel was 182,000 pounds. He thought the catch this year is something, as in 1905 though he had not the figures at hand yet. Fifty-two vessels, then, are the total number sailing from Gloucester to the Grand Banks. He would say that there are 160 other Gloucester vessels which do not touch at our ports at all. They all go to Nova Scotia ports, from which they get their bait and their supplies. The house was told tonight that if these resolutions were passed Canadian sympathy would pour in on us.

To-day, as a matter of fact, Canada is taking advantage of our irresolution in dealing with the Americans. Cold storage plants are being erected and squid traps are being placed in the waters of every harbor along the Nova Scotia coast. The idea of Canadian sympathy coming over to us is ridiculous. That is how the Canadians are showing their sympathy for us, and can we be dull in remembering how we treated Canada and her fishermen twelve or fourteen years ago. Is it any wonder either that they are showing no sympathy for us when the people of St. John's are leaving the galleries empty and that not a solitary breath of applause has been heard since the debate began? Why do the Government, if Newfoundland was humiliated by the passing of the *modus vivendi*, and if her constitution was infringed, not take advantage of the privileges of Responsible Government? Why do they not go back to the people they have deceived? When the Imperial Government interfered with the Government of Natal, they immediately began to show themselves possessed of courage and some back bone. This is the last thing, however, the Newfoundland Government would think of is resigning. The members of that government do not want to give up their loaves and fishes and the chances of pickings they enjoy in their present berths. He challenged the Minister of Finance and all the members of the West Coast districts to say if they had told their constituents what attitude they were going to take on the matter of the herring fishery. He, Mr. Cashin, had been a member of the Liberal party for twelve years, and in all

that time until the meeting of the house had never been given a hint as to the intentions of the party on this matter. His first intimation of any act to be passed was when that act was brought before the house by the Premier. That was the sort of conduct which drove him to the position he now occupied. He had heard today seemingly from a reliable source, that the merchants of Water Street were going to enter the industry of buying herring at Bay of Islands. He had also been told that His Excellency the Governor while entertaining the members of the upper house a few nights ago said that no less than 740 of our young men had left the country in the last twelve months. He further intimated to them that it would be the right and proper thing if the merchants would prosecute the fishery at Bay of Islands. He, Mr. Cashin, had heard that yarn about our merchants taking up the fishery too often to place any confidence in it. Two years ago it was raised, but it was soon seen that they did not seem over anxious to touch herring when the time came. One or two plucky ones intimated that they would enter the fishery if a bounty were placed on all herring exported. That would mean our fishermen would have had to pay the bounty, which would in all probability amount to the duty on herring entering the United States, and ship owners and merchants would fatten at the expense of the fishermen. He thought he had convinced the Minister of Finance by this time that we do not control the bait supplies of the North Atlantic. The Minister of Finance had stated that if Newfoundland and Canada would combine against the American fishery on our coasts it would be destroyed in ten years. Now, did he cast that out as a feeler that the Premier is expecting to go to Canada and there make a deal so as to further exclude the Americans from this colony. That, at least, is how he, Mr. Cashin, took it.

The house was told yesterday by Capt. C. Dawe that something should be done to keep the Americans from ruining our Labrador and Straits fisheries. Where do we find that the Americans went, after the Government of to-day drove them from our shores? We find that after baiting on caplin, which strike in in abundance in the Straits of Belle Isle, they make for the Labrador coast, get the best of the fishery and pollute the waters there to the detriment of our own people. When the Foreign Fishing Vessels Act was passed no man conceived that the Americans would have done better without the privileges previously given by Newfoundland than with them. Driven away from the West Coast the Americans had gone to the Straits of Belle Isle, had taken the first school known as the caplin fish, polluted the waters of the coast with the result that those who came after them were much injured, weighed their anchors and passed on. When they were through with the fresh caplin fish, they salted down a lot of caplin and went off to the Flemish Cap, did particularly well, and went home to Gloucester with better catches than ever before. Compare them for a moment with the Nova Scotia fleet which had all the privileges Newfoundland could give them. They did not get an average of 800 per vessel and went back to Nova Scotia with less than half the amount brought home by the Americans. The policy of the Americans was to salt down enough bait after getting through with the Labrador fishery to last them while fishing at Flemish Cap. Some of the vessels had done well, some had done poorly, but the average result compared very favorably indeed with

any previous year; that was the injury which had been done by the policy of the Newfoundland Government to the Americans. The Premier had intimated in his address, two days ago, that the fishermen who suffered because of the abolition of their industry, would be considered and compensation allowed them. He, Mr. C. did not altogether know whether the Premier meant what he was saying or not, but he considered that such a course would be a just one. There were many independent fishermen who for years had been working hard from day to day to make a living and be independent in the world; many of these found themselves to-day completely flattened out with no course left open to them but that of getting out of the colony.

There was another subject to which he wished to call attention. Two years ago the people of this country had been told in the speech from the throne that the matter of cold storage would be dealt with. Two years ago the members of the house were staying up all night talking about cold storage, but to-day the local fishermen were as hungry for bait as ever they were. Last year after the caplin season was over, squid were to be had for three or four days, then for ten days the squid were gone; the fishermen had no means of saving the squid except by salting them, and every fisherman knew the difference between fresh squid and salt squid; when it came to catching fish. Thousands of quintals more of fish would have been caught last year if the members of the Legislature were in earnest in the stand which they had taken two or three years ago. If they had been in earnest, two or three or more settlements would have been selected so that practical tests could have been made. He himself, lived amongst the fishermen and knew what they wanted. He, himself had seen fishermen coming back on fine days with their boats and saying no fish could be caught because no bait was to be had. On the other hand, in the settlement of Bay Bulls he had seen how, by the enterprise of Mr. Weeks and a little help from the Government, the fishermen who were provided with bait from the cold storage plant could procure fish many days when the fishermen of Witless Bay and Toad's Cove and other parts of the district were compelled to sit idly by waiting for the squid to strike in. He supposed that cold storage operations would be undertaken about the same time that the smelting plant on Bell Island, of which the Government had been talking two years ago, would start working. It was enough to make the Irish blood of any man boil to come to this house day after day and night after night and see the mockery which was going on, and he was asked to-day to vote upon this address, which was another mock. The member for Trinity, Dr. Lloyd, had stated that he was an Englishman. He would tell that hon. member that he, Mr. Cashin, was as true to the flag of England as ever an Englishman was, but his loyalty to the flag would not compel him to come to this house and make a mockery of the people who elected him. He intended to record his vote against the address, feeling sure that he was representing the true interests of the people in so doing; and he would go further and thank the Mother Country on behalf of the people of Bay of Islands that she in her wisdom stepped in with the *modus vivendi* and made an arrangement whereby for another year the question could stand over until the Imperial Government could have a chance of passing upon it. When the Rt. hon., the Premier felt himself humiliated in con-

nection with the *modus vivendi*, why did he not take the only sensible course open to him, namely appeal to the people? But he was too scared to appeal to the people. He was as scared of the people as any man ever was who occupied the position which he occupied. No matter what day one looked at the newspapers of St. John's he could see some scandal in connection with some Government department come out under double headlines. For instance, the robbery at the Custom House, the Lunatic Asylum scandal, the Marine and Fisheries scandal, and so on through every department of the Government. How, then, could the Premier go back to the country? He might be able to fool the people part of the time, but the Premier would find out that he could not fool all the people all the time.

SPEECH OF SIR ROBERT BOND ON THE NEWFOUNDLAND FISHERY BEFORE
THE COLONIAL CONFERENCE OF 1907, MAY 14, 1907.^[a]

CHAIRMAN: Yesterday I received a notice from Sir Robert Bond that he wished to bring a subject before the Conference concerning the Newfoundland Fisheries, and Sir Edward Grey has attended for that purpose.

SIR ROBERT BOND: Lord Elgin and gentleman: In proposing this question for the consideration of this Conference, I do not intend to make more than a passing reference to the conditions that appertained in Newfoundland under the *modus vivendi* entered into between His Majesty's Government and the Government of the United States of America in October 1906. All the facts are well known to His Majesty's Government and to the Colonial Members of this Conference, for I have taken occasion to place in the hands of the latter a concise history of the same. Any comments upon what transpired under that arrangement, or upon its terms, or the manner of its accomplishment, might be regarded as vexatious. It will therefore, only be necessary for me to briefly outline the Treaty relations that have existed and that still exist between His Majesty's Government and that of the United States of America; the obligations that are imposed upon American subjects under the existing Treaty and the contentions of the Government of the United States of America now before His Majesty's Government, and which, I submit, are sufficiently grave to warrant the most serious consideration of this Conference, inasmuch as they challenge the binding effect of Colonial laws upon foreign subjects when coming within the jurisdiction of a Colonial Government. The question affects the Colony that I represent principally and most vitally, but it also affects every Colony represented in this Conference.

I have had the privilege of discussing the question with Sir Edward Grey, of the Foreign Office, with your Lordship, and Mr. Winston Churchill, and have stated, as clearly as I know how to do so, what I believe to be the rights of those I represent. That statement I desire to repeat here and now, for if it is held by this Conference to be unreasonable or unduly exacting, I shall be prepared to modify it to meet what may be considered reasonable and right.

[^a British Blue Book, Colonial Conference, 1907, p. 587.]

Now, then, with regard to the Treaty relations between His Majesty's Government and the Government of the United States of America.

Before the American Revolution the inhabitants of all the British Colonies in North America possessed, as a common right, the right of fishing on all the coasts of what was then British North America, and these rights were, in the broadest sense, prescriptive and accustomed rights of property. At the end of the Revolution, and by the Treaty of Peace signed in 1783, the boundaries between the possessions of the two Powers, that is to say, the United States and Great Britain, were adjusted by Article III. of that Treaty, which reads as follows:

"Agreed, that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish, and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of His Britannic Majesty's Dominions in America."

This was a grant or recognition of a right agreed upon for a consideration viz., the adjustment of the boundaries and other engagements into which the United States by that Treaty entered.

For our purpose, it is unnecessary to deal with the other articles of that Treaty.

From 1783, until the war between Great Britain and the United States in 1812, citizens of the United States continued to enjoy the ancient rights belonging to them as subjects of Great Britain before the Revolution, and reserved to them as citizens of the United States, to the extent outlined in the article of the Treaty of 1783, to which I have referred. Between those dates, other subjects of difference and negotiation, apart from the fisheries, arose between the two nations, which were disposed of by the Treaties of 1794 and 1802, but the fishery provisions of 1783 continued down to the period of the outbreak of war in 1812.

At the close of that war a Treaty of Peace was concluded on the 24th of December, 1814, which provided:

(1) For the restoration to each party of all countries, territories, &c., taken by either party during the war, without delay, save some questions of islands in the Bay of Passamaquoddy;

(2) For disposition of prizes and prisoners of war; and

(3) For questions of boundary and dominion regarding certain islands and for the settlement of the north-eastern boundary, and also for the north-western boundary, but it made no reference whatever to any question touching the fisheries referred to in the Treaty of 1783.

On the 3rd of July 1815, Great Britain entered into a Commercial Treaty with the United States, which provided for reciprocal liberty of commerce between all the territories of Great Britain in Europe and the territories of the United States but made no stipulation as

regards commercial intercourse between British Dominions in North America and the United States.

After the conclusion of the Treaty following the war of 1812, viz., that of the 24th of December 1814, there being then no treaty obligations or reciprocal laws in force between, or in either of the countries respecting commercial intercourse, the British Government contended that the fishing rights recognized and secured to the citizens of the United States by the Treaty of 1783 had become abrogated in consequence of the war of 1812, on the principle of war annulling all unexecuted engagements between two belligerents. The fishing rights conveyed to the United States of America by the Treaty of 1783 having been annulled by the war of 1812, the citizens of the United States no longer had the right to fish in any of the North American waters. This exclusion continued until the conclusion of the Treaty of the 20th October, 1818, which Treaty remains in force today, and embodies the whole of the fishing privileges to which United States citizens are entitled in the waters that wash the coasts of Newfoundland and the Dominion of Canada.

Article I of that Treaty contains a recital of the fishing privileges in British North American waters conveyed to the United States by the Imperial Government. That article reads as follows:

“Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours and creeks of His Britannic Majesty’s Dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have for ever, in common with subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands; on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company. And that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbours and creeks of the southern part of the coast of Newfoundland, above described, and of the coast of Labrador; but so soon as the same, or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry and cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounces for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of his Britannic Majesty’s Dominions in America not included within the above-mentioned limits:

“Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying,

or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The Treaty limited to a territorial extent the fishing rights of the people of the United States, which they had enjoyed as British subjects, and which had been recognized and continued under the Treaty of Peace of 1783, and down to the year 1812.

It provided for the continuance of the ancient rights of fishing on certain parts of the coast of the Colony of Newfoundland and of His Britannic Majesty's other Dominions in America. It also provided for a renunciation by the United States of pre-existing rights to take fish within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's Dominions in British North America, not included within the limits set forth in the article which I have read, that renunciation being subject, however, to the proviso that "American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges hereby reserved to them."

The Conference will not fail to observe that this Treaty contained no provision as respects the exercise of what may be termed "commercial rights" by American fishing or other vessels in the waters of the Colony of Newfoundland or of His Majesty's other Dominions in America.

It was not until the year 1830 that a reciprocal arrangement was entered into between the Government of Great Britain and that of the United States for what might be properly termed "commercial" relations, the Act of Congress of May 29th, 1830, providing for the opening of all American ports to certain British Colonial vessels on a mutual opening of British Colonial ports to American vessels, and a Proclamation dated the 5th of October 1830, giving effect to it on the part of Great Britain.

This arrangement would appear to have led to acts of aggression on the part of American subjects, and to a violation of the Treaty obligations of 1818, for we find that in the year 1836 the Government of Newfoundland passed a Bill, entitled, "An Act to prevent the encroachment of aliens on the fisheries of this Colony, and for the further protection of the said fisheries"; that, in the same year, the Province of Nova Scotia passed laws in respect to the seizure of American fishing vessels for trading and fishing within the 3-mile limit; and, that in the year 1838, the said Province of Nova Scotia complained by address to the Queen of such aggressions, and asked for naval force to prevent them. This force was supplied by the British Government and seizures of American fishing vessels became common.

Down through the years until 1854 the same conditions applied, when on the 5th of June, 1854, a comprehensive reciprocal trade treaty was entered into between His Majesty's Government and that of the United States, under which Americans were granted the right to fish within the limits prescribed by the Treaty of 1818, under certain

restrictions. That Treaty terminated in the winter of 1864, by a vote of the Congress of the United States.

Between 1864 and 1871 the policy of issuing licences to American fishermen to fish in the waters from which they were excluded for fishing purposes by the Treaty of 1818, was adopted by the Canadian Government, and, during the year 1866, 354 licenses were issued by that Government at the rate of 50 cents per ton. The next year the licence fee was increased to \$1 per ton, and the number of licences issued amounted to 281. In 1868 and 1869 the license fee was doubled to \$2 per ton, and in the years 1868 and 1869, 56 and 25 licenses respectively were taken out. The Canadian Government then changed its policy and enacted exclusive laws against American fishermen forcing them to keep without the 3-mile limit.

In the year 1871, another reciprocal trade Treaty was entered into between His Majesty's Government, and that of the United States, which provided that, for a period of 10 years, fishermen of the United States should have, in addition to their right under the Treaty of 1818, the privilege of inshore fishing in the waters of British North America under certain limitations. In return for that privilege, it was provided that the fishery products of Newfoundland and of the neighbouring Dominion were to have free entry into the markets of the United States. On the 1st of July, 1885, that Treaty was terminated by the Congress of the United States, and the fishing rights of United States' citizens reverted back to those outlined in the Treaty of 1818.

One month later, namely, on the 1st of August, 1886, a telegram was received by the Officer Administering the Government of the Colony of Newfoundland from the Secretary of State for the Colonies, intimating that His Majesty's Government deemed it "desirable that steps should be taken by the Government of the Colony to decide definitely on the exact nature of the proposals to be made to the Government of the United States in anticipation of the negotiations which were contemplated in view of the termination of the temporary arrangements that were made by His Majesty's Minister at Washington with the United States Government arising out of the termination of the fisheries articles of the Treaty of Washington of 1871, on the 30th June, 1885." The answer which was given by the Government of Newfoundland to this representation was the introduction of the Bait Act in the year 1886. The reasons that prompted the adoption of that measure were set out by the then Governor of the Colony in a despatch to the Colonial Office, bearing date 25th day of May 1886, wherein he stated that:—

"The people of Newfoundland, like those of Canada, desire to use the right to withhold a supply of bait as a means of inducing the American Government to remove the import duties on British fish."

And again, in another despatch from Sir G. William Des Voeux to the Colonial Office, bearing date 4th of January 1887, in support of the Bait Act, which was held in abeyance by His Majesty's Government for 12 months, he stated that:

"American fishermen are protected in the markets of the United States, which take all their produce by a duty of 56 cents per quintal, which is almost prohibitive to the results of British industry;" and

"Though the measure, if allowed, would, to a large extent, place the fisheries in this neighborhood within the control of the people

of this Colony, they have no desire to monopolise them, and I feel satisfied that they would willingly modify the provisions of the measure in favour of such Governments as would grant a reciprocity. * * * I have good reason for believing that as regards the United States, the right of obtaining bait would be restored on the opening of the American markets to Newfoundland fish * * * in a word, the principle that the colonists desire to maintain is 'live and let live' and they merely object to that of let others live by killing us."

Following upon this despatch from Sir George Des Voeux to the Secretary of State for the Colonies, and under date the 16th June, 1887, a letter was received by the representative of the Newfoundland Government, then in London, from the Office of Legation of the United States, intimating that:—

"Should the Government of Newfoundland see fit to give notice that American fishermen be admitted to the ports of that province for the purpose of obtaining supplies, the proposal will be cordially accepted and acted upon by the Government of the United States. In that event there would be no objection on the part of the United States Government to entertain suggestions for an independent agreement in respect to the fisheries of Newfoundland, and if made by the authorised agents of the Imperial Government."

The invitation was most cordially received by the Government of Newfoundland. Negotiations were opened by His Majesty's Government with the Government of the United States of America, and on the 15th of February 1888, what is known as the Chamberlain-Bayard Treaty was signed at Washington. This Treaty provided for free fishing in exchange for the free admission of fish and fish products, the result of British catch, into the markets of the United States of America. This Treaty was approved and signed by the United States Government, but was rejected by the United States Senate, and the fishery privileges of the United States consequently reverted to those embodied in the Treaty of 1818.

In this same year, 1888, the Bait Act referred to in the dispatch of Sir G. W. Des Vœux, extracts from which I have quoted, was brought into force with the assent of the Crown, and under the provisions of the same, foreign fishing vessels were excluded from the inshore bait fisheries, except under licence, and notices were issued to the United States Government from the Department of the Colonial Secretary of the Colony calling attention to the provisions of the said Act.

By virtue of the authority vested thereunder in the Governor-in-Council, a tax of \$1.50 per net ton was imposed upon all American fishing vessels visiting the coast in quest of bait fishes.

Our relations with the United States continued in this form until the year 1890, when, by a despatch, bearing date 28th February 1890, from Sir Terence O'Brien, Governor of the Colony, to the Secretary of State for the Colonies, the question of a direct and independent trade arrangement between Newfoundland and the United States of America was revived. This negotiation resulted in my being authorised to proceed to Washington to assist in bringing about such an arrangement. The result of my visit to Washington was what is known as the Bond-Blaine Convention of 1890, which was virtually upon the same lines as the Chamberlain-Bayard Treaty of 1888.

This Convention was approved by the United States Government, but was not ratified by His Majesty's Government.

In view of the fact that the United States Government had signified its willingness to exchange a free market with us for bait privileges, and that our Convention was not held in abeyance by reason of any action or want of action on its part, the Government of Newfoundland extended to United States fishermen, for a period of 12 years, all the privileges that it was contemplated should be granted under the Convention of 1890.

Mr. DEAKIN: You say the Convention was approved by the United States Government, but did that include the United States Legislature?

Sir ROBERT BOND: No; it did not come before the United States Legislature. It was signed by Mr. Blaine on behalf of his Government. It was then sent over to this country for His Majesty's approval, and a protest was entered against its ratification by the Dominion Government, and His Majesty's Government held it in abeyance for 12 years.

Sir WILFRID LAURIER: Is it not a fact that the Treaty was submitted by the American Government to the Senate, and they refused to ratify it?

Sir ROBERT BOND: No, the 1890 Treaty never went before the Senate at all, but the 1902 Treaty did. I am coming to that now.

During 12 years from 1890 to 1902, the Government of Newfoundland persistently urged His Majesty's Government to fulfil its undertaking as regards the United States Convention, but without avail.

In 1902 I was in this country in connection with His Majesty's Coronation and the Conference of Colonial Premiers, and I availed myself of the opportunity of pressing upon the then Secretary of State for the Colonies—Mr. Chamberlain—the unfairness of the treatment that had been meted out to us as a Colony during the 12 years previous in relation to our proposed trade arrangement with the United States of America, and begged the privilege of being again permitted to proceed to Washington to re-open negotiations with the United States Government for an arrangement upon the lines of the Convention of 1890. My request was acceded to, and I was furnished with the necessary authority to proceed to Washington. The result of my visit was what is known as the Hay-Bond Treaty of 1902. This Convention was ratified by the Secretary of State of the United States on behalf of his Government, and by the late Sir Michael Herbert on behalf of His Majesty's Government. It provided, as did the former Convention, for the free admission of fishery products of Newfoundland into United States markets in exchange for baiting privileges in the Colony. That Convention was held in abeyance for some considerable time by the Foreign Relations Committee of the United States of America, but in the year 1904 it was reported by that Committee to the United States Senate, where it was virtually amended out of existence at the instance of the fishery interests of Gloucester (Massachusetts).

Between 1902 and 1904 the privileges that had been freely extended to the United States during the 12 years previous were continued, but after the action of the United States Senate became known to my Government, in the interests of the trade and commerce of the Colony, it was determined that the policy of the Government of 1886—which

had been so forcibly advocated by the then Governor, Sir G. W. Des Voeux—should be enforced against American fishermen.

When the legislature met on the 30th March, 1905, His Excellency the Governor, in the speech from the throne, said: "I would observe that the serious loss occasioned the fishermen of this Colony last season by the difficulty of obtaining a full supply of bait fishes rendered it very imperative for my Ministers to consider whether the very valuable bait privileges conceded to the fishermen of the United States by the Government of this Colony in expectation of ratification of the Convention could be continued without detriment to our fishery interest. After very careful inquiry and consideration, it was decided that, under existing circumstances, local interests would be best conserved by withholding those privileges."

In order to more effectively carry out the provisions of the Bait Act, which had been in force for nearly 20 years against French fishermen, but which, for the reasons I have set forth, were not enforced in their entirety against American citizens, the Government introduced the Foreign Fishing Vessels Act of 1905, whereby it was provided, amongst other things, that it shall be unlawful for the master of any foreign fishing vessel "to engage any person to form part of the crew of said vessel in any port or on any part of the coasts of this island."

The method adopted by American fishermen of conducting the herring fishery on the west coast of the Colony had ever been by purchase or barter. The Bait Act, as it stood, enabled us to prevent a continuation of that practice, but the Government appreciated that the Americans would attempt to overcome the difficulty occasioned by the enforcement of the Bait Act by engaging local fishermen to form part of their crews, and to catch the fish they required. It was for the purpose, then, of preventing this evasion of the spirit and intention of the Bait Act of 1887, that the clause that I referred to was inserted in the Act of 1905.

At the close of the Session of the Newfoundland Legislature of 1905, this Foreign Fishing Vessels Act was assented to and became the law of the land.

In October of that year the autumn herring fishery on the west coast commenced, when it was found that American fishermen were determined to ignore the provisions of the Bait Act as well as the Foreign Fishing Vessels Act of 1905. The position was further aggravated by their refusing to comply with our Customs and Revenue Laws and to enter and clear and pay light dues as they had ever done heretofore.

Out of deference to the wishes of His Majesty's Government, my Government abstained from enforcing local statutes against American citizens on the Treaty coast, during the autumn fishery of 1905, thereby occasioning themselves very considerable embarrassment. They were led to adopt this course believing that during the period that would elapse before the next fishing season came round a special effort would be made by His Majesty's Government to arrive at a satisfactory solution of the difficulties that had arisen by reason of the action of the United States fishermen, and failing such solution that His Majesty's Government would strictly confine the United States to the privileges accorded its inhabitants by the Treaty of 1818.

In the session of 1906, I introduced a Bill to amend the Foreign Fishing Vessels Act of 1905, by declaring that the first part of section 1 and the whole of section 3 thereof do not apply to foreign fishing vessels resorting to Newfoundland waters in the exercise of Treaty rights. This was done at the request of His Majesty's Government in order to meet objections that had been raised to the measure by the Government of the United States.

This Bill also contained the provisions:—(1) that it should be unlawful for a resident of the Colony to leave it for the purpose of engaging in foreign fishing vessels intending to fish in the waters of the Colony; and (2) that it should be unlawful for the master, owner, or agent of any foreign fishing vessel to engage British subjects to fish for them within the territorial waters of the Colony. These provisions were rendered necessary because while the Bait Act of 1887 declared that no man should take bait fishes within the jurisdiction of the Colony without a licence, and the Foreign Fishing Vessels Act of 1905 declared that any master who attempted to engage any person to form part of the crew of any foreign fishing vessel in any port or in any part of the coast of this island should have his vessel confiscated, in the autumn fishery of 1905 the Americans deliberately proceeded to aid and abet our fishermen in violating the Bait Act by engaging them through agents in Bay of Islands as part of their crew, taking them outside the 3-mile limit to formally ship and enter their service, and returning with them inside our jurisdiction to fish.

It will be observed that whereas the Foreign Fishing Vessels Act of 1905 penalised the master of any foreign fishing vessel for engaging any person to form part of the crew of said vessel within the jurisdiction of the Colony, the amending Act of 1906 penalised the master, owner, or agent of such vessel who should engage British subjects, either outside or inside our jurisdiction, and utilise them within our jurisdiction to fish for them.

The machinery for a complete control over our own people so as to prevent them from aiding the Americans in catching such fishes was thus provided by the Legislature, but this machinery was rendered inoperative by the *modus vivendi* entered into between His Majesty's Government and the Government of the United States of America in October 1906, the terms of which may be summarised as follows, viz.:—

1. Permission to the Americans to use purse seines during the ensuing season, the use of which instruments of capture the law of the Colony prohibited and penalised;

2. Permission to the Americans to ship Newfoundland fishermen *outside* the 3-mile limit, which, by the law of the Colony, was prohibited and penalised;

3. The undertaking on the part of His Majesty's Ministers not to bring into force the Foreign Fishing Vessels Act of 1906, an Act regarded by the Legislature of the Colony as essential in order to control the conduct of British fishermen and effectively enforce the provisions of the Bait Act of 1887;

4. An undertaking on the part of His Majesty's Ministers to limit the operation of a law of the Colony (the Foreign Fishing Vessels Act, 1905) by the non-enforcement of the first part of section 1 and the whole of section 4.

With the validity of the *modus vivendi* of 1906, I do not propose to deal. Suffice it to say that the Supreme Court of Newfoundland has

decided that it could not override local statutes as intended. With the humiliating circumstances that attended its enforcement I shall not trouble this Conference. I shall content myself by stating that the concessions contained in the *modus vivendi* were placed there to satisfy the demands of the Government of the United States of America.

The contentions of the American Government were as follows:

1. That there should be no interference on any grounds by officers of the Newfoundland Government with American fishermen.
2. That the Convention of 1818 justifies no interference.
3. That the fishing laws of the Colony are not binding upon the United States fishermen.
4. That American fishermen are not obliged to conform to our Revenue and Custom laws.

Now I would draw attention to the fact that the assertion of the United States Government "that the Convention of 1818 justifies no interference on any grounds with American citizens exercising a right to a fishery in common with His Majesty's subjects," is equivalent to a declaration that American citizens can do as they please and violate our fishing and other laws with impunity.

In answer to that position, I would refer to the opinion of the Law Officers of the Crown, Messrs. W. Atherton and Roundell Palmer, who, on the 6th January, 1863, declared as follows:—

"That, in our opinion, inhabitants of the United States, fishing within waters in the territorial jurisdiction of the Legislature of Newfoundland, are bound to obey, and are legally punishable for disregarding, the laws and regulations of the fisheries enacted by or under the authority on the provincial Legislature. The plain object of the Treaties above referred to was to put the inhabitants of the United States as regards the 'liberty to take fish' within the parts described of the British Dominions on the same footing as 'subjects of His Britannic Majesty' 'in common with whom' under the terms of the Treaty, such liberty was to be enjoyed. The enactments subsequently passed would not confirm the Treaties and provide for the suspension during the operations of those Treaties of such laws, &c., as were or would be inconsistent with the terms and spirit of the Treaty, which 'terms and spirit' are, it appears to us, in no respect violated by the regulations bona fide made by the Government for the conduct of the fishery and applicable to British subjects so employed."

My contention is that the Colony (subject to the King) is the Sovereign Power, and that the Sovereign Power has the right to enact bona fide legislation for the preservation of its fisheries, and also all legislation inherent in its Sovereignty, such as Customs and Municipal Laws, and that subjects of a foreign Power that have Treaty rights in the territorial waters subject to Sovereignty are liable to be governed by our fishing laws, when they are applied to British subjects and are admittedly made for the preservation of the fisheries.

I would also refer to the opinion of an American jurist, Hall, which occurs in a passage on International Law. He says, in commenting on the Newfoundland fisheries question:

"It was argued by the United States that the fishery rights conceded by the Treaty were absolute, and were to be exercised wholly free from the regulations or statutes of Newfoundland, and from any other regulations of fishing now in force, or that may be enacted by

that Government; in other words, it was contended that the simple grant to foreign subjects of the right to enjoy certain national property in common with the subjects of the State carried with it by implication an entire surrender, in so far as such national property was concerned, of one of the highest rights of sovereignty, namely, the right of legislation. That the American Government should have put forward such a claim is scarcely intelligible."

As to the duty of the subjects of one nation to conform to the laws of another, the doctrine is laid down as follows in Phillimore's International Law:

"With respect to merchant and private vessels, the rule of law is that except under the provisions of express stipulation such vessels have no exemption from the territorial jurisdiction of the harbour or port, or, so to speak, territorial waters in which they lie."

And this is supported by the late Chief Justice Marshall of the United States as follows:

"When private individuals of one nation spread themselves through another, as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, and when merchant vessels enter for the purpose of trade, it would be obviously inconvenient and dangerous to society and would subject the laws to continued infraction and the Government to degradation, if such individuals or merchant ships did not all temporarily submit to local regulations and were not amenable to the jurisdiction of the country, nor can a foreign sovereign have any motive in wishing such exemption. His subjects thus passing into foreign countries are not employed by him, nor are they engaged in national pursuits. Consequently there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and not one motive for acquiring it. The implied license therefore, under which they enter can never be construed to grant such an exemption. One sovereign, being in no respect amenable to another, is bound by obligations of the highest character not to degrade the dignity of his nation by placing himself or its sovereign within the jurisdiction of another. A foreign sovereign is not understood as intending to subject himself to a jurisdiction incompatible with his dignity and the dignity of the nation."

English law is the same, as in the celebrated case of the "*Franconia*," the judges concurring with Mr. Justice Lindley when he said:

"It is conceded that even in time of peace the territoriality of a foreign merchant ship within 3 miles of the coast of any State does not exempt that ship or its crew from the operation of those laws which relate to its revenue and its fisheries."

And Sir Travers Twiss states the law thus:

"Treaty engagements in such matters as fisheries in common do not give any other right than that which is expressed in the specific terms."

Again, the United States Government, as far back as 1856, recognised not only the right, but the desirability, of the enforcement of the laws of Newfoundland upon United States citizens entering the territorial waters of the Colony to engage in fishing. On the 28th March, 1856, the following instruction to the masters of American fishing vessels was issued from the State Department, Washington, namely:

"It is understood that there are certain Acts of the British North American Colonial Legislature, as also, perhaps, Executive regulations, intended to prevent the wanton destruction of the fish which frequent the coasts of the Colonies and injurious to the fishing thereon. It is deemed reasonable and desirable that both United States and British fishermen should pay a like respect to such laws and regulations which are designed to preserve and increase, the productiveness of the fisheries on these coasts. Such being the object of these laws and regulations, the observation of them is enforced upon the citizens of the United States in a like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries neither party has yielded its right to civic jurisdiction over a marine league along its coast. Its laws are as obligatory upon the citizens or subjects of the other as upon its own."

In 1886 there was a similar recognition by the Government of the United States of the binding effect of Colonial laws upon its citizens when coming within the jurisdiction of the Colony. In a despatch from Mr. Bayard, of the Department of State, Washington, to Sir Lionel West, bearing date 10th May, 1886, it was stated:

"Since 1818 certain important changes have taken place in fishing which have materially modified the conditions under which the business of inshore fishing is conducted, and it must have great weight in any present administration of the Treaty.

"Everything will be done by the United States to cause its citizens engaged in fishing to conform to the obligations of the Treaty and prevent an infraction of the fishing laws of the British provinces."

Again, in a despatch from Mr. Bayard to Sir Lionel West of date, 20th May 1886, that gentleman stated that he was desirous that due and full observance should be paid by the citizens of the United States to local laws and commercial regulations of the ports of the British provinces.

This position is further upheld by a despatch from the Marquess of Salisbury to Mr. White in 1887, in which he states that "such statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the Convention of 1818, especially in view of the passages of the Convention which provide that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them."

The question of the legality of laws and regulations in relation to the conduct of the fisheries under the Treaty of 1818 passed by the Canadian Parliament was discussed between the British Government and the Canadian Government and that of the United States in the year 1886.

If the Parliament of Canada had, and still has, the right to pass and enforce such laws, the Newfoundland Legislature has an equal right, for its constitution is the same.

That was placed beyond question by the Imperial Act of 1865 "an Act to remove all doubts as to the validity of Colonial laws," the 7th section of which reads as follows:

"All laws or reputed laws, enacted or purporting to be enacted by the Legislatures which have received the assent of Her Majesty in Council, or which have received the assent of the Governor of the

said Colony, in the name and on behalf of Her Majesty, shall be, and be deemed to have been, valid and effectual from the date of such assent for all purposes whatever."

Now, with regard to the shipping of Newfoundlanders to form part of the crews of American vessels fishing within territorial waters. This was permitted by His Majesty's Government under the *modus vivendi* of 1906 in contravention of the Colonial law. The Colony has prohibited the engaging of Newfoundland labour. This course was rendered necessary because the United States Treasury Department has ruled that herrings taken by Newfoundland crews on board of American vessels may be landed free of duty just as though they had been taken by American crews. The effect of that ruling has been to give to the merchants of Gloucester, Massachusetts, what amounts to a monopoly of the United States herring market, independent competition being impossible in the face of an import duty equivalent to 25 per cent. of the value, which American traders are enabled to evade.

I would once again revert to the despatch of Governor Sir George Des Voeux to the Colonial Office, at the time that the Act under which this prohibition is enforced was before His Majesty's Government. You will please remember that this Act has been on the Statute Book for 20 years. Sir George Des Voeux said, in speaking for his Government:

As far back as the year 1844, the Provinces of British North America had adopted legislation for the enforcement of the provisions of this very Treaty. They were passed by Nova Scotia, New Brunswick, and Prince Edward's Island, and afterwards by the Dominion of Canada. Even while the dispute was pending between the United States and Canada, an Act was passed to further amend the Act respecting Foreign Fishing Vessels, which, having passed the Canadian Parliament, was reserved by the Governor-General for His Majesty's pleasure, and eventually received the Royal Assent on the 26th November 1886. In March 1886, the Canadian Government promulgated the following instructions to its officers enforcing the Canadian fishery laws:

"You are to compel, if necessary, the maintenance of peace and good order by foreign fishermen pursuing their calling, and enjoying concurrent privileges of fishing and curing fish with British fishermen, in those parts to which they are admitted by the Treaty of 1888. You are to see that they obey the laws of the country, and that they do not molest British fishermen in the pursuit of their calling, and that they observe the regulations of the fishery laws in every respect."

In a report to His Majesty's Government dated 1886, the late Sir John Thompson, then Minister of Justice, and afterwards Premier of the Dominion of Canada, wrote:

"The right of the Parliament of Canada, with the Royal Assent, to pass an Act on this subject to give that Treaty effect, or to protect the people of Canada from an infringement of the Treaty itself, is clear beyond question. An Act of that Parliament, duly passed according to constitutional form, has as much the force of law in Canada, and binds as fully offenders who come within its jurisdiction, as any Act of the Imperial Parliament; and the efforts made on the part of the Government of the United States to deny and refute the validity of Colonial Statutes on this subject have been continued for years, and

in every instance have been set at nought by the Imperial authorities, or by the judicial tribunals."

"The people of Newfoundland, like those of Canada, desire to use the right to withhold a supply of bait as a means of inducing the American Government to remove the import duty on British fish.

* * * In a word, the principle that the Colonists desire to maintain is 'live and let live', and they merely object to that of 'let others live by killing us.'"

When the prohibitive import duty is removed, the restriction imposed by the Bait Act, 1887, will cease to be enforced; for Newfoundland is prepared to compete with the fishermen of the United States or of any country upon equal terms, but she objects to give free access to her unrivalled bait supplies to those who debar her from their markets by prohibitive tariffs worked in so unjust and evasive a manner as that set forth in the Treasury Order to which I have referred.

Just a few words more and I have done. I submit that there is nothing in the Treaty of 1818 which conveys a right to the United States to employ Colonial fishermen to fish for them. I have heard it argued that "what one does by another one does by himself." That is a maxim which applies entirely to the law of agency.

Under the Treaty of 1818, the privilege of a fishery in common with British subjects was granted to "the inhabitants of the United States," and the privilege was to "take" fish (not to buy or procure it in any other way.) The word "take" was used in its special and restricted meaning to distinguish the liberty from the rights which the British subjects enjoyed; namely, to use the land as well as the sea, and to buy, sell, trade, or deal in any way with the products of the fisheries. I submit that the United States can only "take" fish and can only take it in common, that is to say, by the same implements of capture as British subjects and subject to the same restrictions, regulations, or laws that govern their conduct.

The permission to enter and fish cannot be construed as conferring upon the admitted foreigner a right, but only a liberty or a privilege.

In considering the Treaty of 1818, it is important to remember the class to whom the concession is given, namely, the American fishermen named in the article. (1) *They must be inhabitants of the United States.* (2) *They must be American fishermen,* and the liberty granted to them is to take, dry, and cure fish. The word shows the privileged class to whom the Treaty applies, and the vessels employed therefor, and the special Treaty privilege of fishing in the territorial waters of Newfoundland. There is no maxim of the law better known than that which affirms that the "express mention of one person or thing is the exclusion of another." It would, therefore, follow that the mention of "inhabitants of the United States," "American fishermen," named in the Treaty, excludes all others. But we are not left to ourselves to place the interpretation on this Treaty, as to the class to whom the privileges are granted. It has been so read by the inhabitants of the United States for the last hundred years, and no later than last July, Mr. A. P. Gardner, the representative for Gloucester in Congress, writing to the "Boston Herald," of July 9th, under date of July 7th, said as follows:

"I am in receipt of a letter, dated July 2nd, from the Secretary of State (that is the Secretary of State for the United States) answering

a large number of questions raised in my Memorandum to Mr. Alexander, of the United States Fishery Commission. The State Department believes that Newfoundland has the right to prohibit its own citizens from engaging in or prosecuting the fishery unless they are inhabitants of the United States. If they are inhabitants of the United States we are entitled to have them fish from our vessels regardless of their citizenship."

The State Department of Washington having thus placed this interpretation on the Treaty, it is difficult to conceive why the Newfoundland laws were over-ridden last year under the *modus vivendi*, or why the Act of 1906 which merely enables the Colony to more effectively enforce the Bait Act of 1887 upon its own citizens is still held in abeyance by His Majesty's Ministers. What I have asked for at the hands of His Majesty's Government is:

1st. The Assent of the Crown to the Act of 1906.

2nd. That the Colony be permitted to carry out those laws that have been approved by the Crown.

3rd. That His Majesty's Government define the rights of American citizens under the Treaty of 1818.

The Colony does not desire to limit in any way the rights of American citizens under that Treaty. It asks for nothing but justice and responsibility sanctioned by the spirit and forms of the British constitution.

We do not think it just that permission should be given by His Majesty's Government to a foreign Power to over-ride or contravene the laws of the Colony, or that an undertaking should be given to a foreign Power by His Majesty's Government not to sanction certain Colonial legislation.

It has been suggested that the matters in dispute might properly be submitted to arbitration. I cannot see what there is to arbitrate upon. To my mind, the only question is, as to the binding effect of Colonial laws upon American citizens when they come within British jurisdiction. If it is intended to submit the Treaty to arbitration, then I contend, that its terms are clear, that the privileges granted to the inhabitants of the United States thereunder are not set forth in language that is ambiguous. Vattel, probably the best authority upon the interpretation of treaties, says:

"The first general maxim of interpretation is, that it is not allowable to interpret what has no need of interpretation. When the wording is in clear and precise terms and its meaning is evident and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such Treaty naturally presents, and to go elsewhere in search of conjectures in order to restrict or extend it is but an attempt to elude it."

If, on the other hand, it is intended to submit Colonial statutes to arbitration, then I respectfully contend that it would be derogatory to the Crown, and in direct contravention to the constitutional right of the self-governing Colonies, to submit their statutes to the arbitrament of any foreign Power or of any person, or body of men.

EXTRACTS FROM THE PROCEEDINGS OF THE HALIFAX COMMISSION.

Case of Her Majesty's Government before the Fishery Commission under the Treaty of Washington, of May 8, 1871.

INTRODUCTION.

In laying the case of Her Majesty's Government before the Commissioners, it will be desirable to commence by a brief history of the fisheries question since the outbreak of the War of Independence in 1775.

Before the commencement of this war all British colonists enjoyed equal privileges in matters connected with fishing, but at its close, and on the conclusion of peace, it became a question how far such privileges should be restored to those who had separated from the British Crown. The matter was very fully discussed in the negotiations which preceded the treaty of the 3d September, 1783, and though Great Britain did not deny the right of the American citizens to fish on the Great Banks of Newfoundland, or in the Gulf of St. Lawrence, or elsewhere in the open sea, she denied their right to fish in British waters, or to land in British territory for the purpose of drying or curing their fish. A compromise was at length arrived at, and it was agreed that United States fishermen should be at liberty to fish on such part of the coast of Newfoundland as British fishermen could use, but not to dry or cure their fish on that island; and they were also to be allowed to fish on the coasts, bays, and creeks of other British possessions in North America, and to dry and cure their fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, the Magdalen Islands, and Labrador, so long as they should remain unsettled; but so soon as any of them became settled, the United States fishermen were not to be allowed to use them without the previous permission of the inhabitants and proprietors of the ground.

The III. Article of the Treaty of Paris of the 3d of September, 1783, is as follows:

[Here follows the Article.]

It should, however, be observed that the rights conceded to the United States fishermen under this treaty were by no means so great as those which, as British subjects, they had enjoyed previous to the War of Independence, for they were not to be allowed to land to dry and cure their fish on any part of Newfoundland, and only in those parts of Nova Scotia, the Magdalen Islands, and Labrador where no British settlement had been or might be formed, expressly excluding Cape Breton, Prince Edward Island, and other places.

So matters stood until the war of 1812 broke out, when, of necessity, the right of American citizens to fish in British waters, and to dry and cure their fish on British territory, terminated. In the course of the negotiations which preceded the peace of 1814, this question was revived, and the alleged right of American citizens to fish and cure fish within British jurisdiction was fully gone into by the British and American commissioners who were assembled at Ghent

for the purpose of drawing up the articles of peace. At that time, however, the circumstances had very considerably changed since the Treaty of 1783 had been concluded. The British North American possessions had become more thickly populated, and there were fewer unsettled bays, harbors, and creeks in Nova Scotia than formerly. There was consequently greater risk of collision between British and American interests; and the colonists and English merchants engaged in the fisheries petitioned strongly against a renewal of the privileges granted by the treaty of 1783 to the American fishermen.

It was under these circumstances that the negotiations for peace were entered into. At the first meeting, which took place on the 8th of August, 1814, the British commissioners stated "that the British Government did not intend to grant to the United States gratuitously the privileges formerly granted to them by the treaty of fishing within the limits of British territory, or of using the shores of the British territories for purposes connected with the fisheries." They contended that the claim advanced by the United States, of immemorial and prescriptive right, was quite untenable, inasmuch as the inhabitants of the United States had until quite recently been British subjects, and that the rights which they possessed formerly as such could not be continued to them after they had become citizens of an independent state.

After much discussion, it was finally agreed to omit all mention of this question from the treaty, which was signed at Ghent on the 24th December, 1814, and which contains no reference to the fisheries question.

Orders were now sent out to the governors of the British North American colonies not to interfere with citizens of the United States engaged in fishing on the Newfoundland Banks, in the Gulf of Saint Lawrence, or on the high seas, but to prevent them from using the British territory for purposes connected with the fishery, and to exclude their fishing-vessels from the harbors, bays, rivers, and creeks of all Her Majesty's Possessions. Orders were also given to the British naval officers on the Halifax station to resist any encroachment on the part of American fishermen on the rights of Great Britain. The result was the capture of several American fishing-vessels for trespassing within British waters; and the President of the United States in 1818 proposed to the Prince Regent that negotiations should be opened for the purpose of settling in an amicable manner disputed points which had arisen connected with the fisheries. Commissioners were accordingly appointed by both parties to meet in London, and the Convention of 20th October, 1818, was eventually signed.

Article 1 of this Convention is in these words:

[Here follows the Article.]

Subsequent to the conclusion of this Convention, in consequence of numerous complaints on the part of Her Majesty's Government of encroachments on their waters by American fishermen, the United States Government issued a notice warning their subjects that they were "to observe strictly the limits assigned for taking, drying, and curing, fish by the fishermen of the United States, under the 1st Article of the Convention of the 20th of October, 1818", a copy of which was annexed to the circular notice.

This was the state of affairs until the year 1847, when, in consequence of a petition addressed to the Queen by the Canadian Parliament, negotiations were opened between the two governments for the establishment of reciprocal free trade between Canada and the United States; and on the 1st of November, 1849, Sir H. Bulwer, who was then about to proceed to Washington as British Minister, was authorized to enter into a negotiation by which access to the fisheries of all the colonies (except Newfoundland, which refused to consent on any terms) should be given to the citizens of the United States, in return for reciprocity of trade with the United States, in all natural productions, such as fish, wheat, timber, &c.

The proposal was favorably received by the United States Government, but some delay occurred, owing to the death of General Taylor in 1850. The new President, however, doubted whether it was a proper subject for a Treaty, and thought that it should be done by legislation, and accordingly a bill was brought in for the purpose. The bill was, however, thrown out, and from one cause or another nothing was done from that time until 1852, when a desire was evinced on that part of the United States Government to come to an arrangement on the subject, and a draft convention having been prepared, a copy thereof was sent home by the British Minister on the 19th December 1852, together with remarks made by the President thereon.

A good deal of correspondence passed between the two Governments on the subject, but, owing to difficulties connected with the question of Tariff, the United States Government appeared anxious to have the Fisheries Question dealt with separately, but to this the British Government would not assent. The fishing season of 1853 accordingly opened without any agreement having been come to with the United States, and fortunately, owing to the measures taken by both Governments for the preservation of British rights, came to a close without the occurrence of further causes of dissatisfaction.

In the mean time, negotiations for a Treaty had been continued by the two Governments; and in the month of May, 1854, Lord Elgin, who was on his way to resume his duties as Governor General of Her Majesty's North American Provinces, received instructions to visit Washington, and to ascertain the views of the United States Government, and if any favorable opportunity presented itself, to conclude a Treaty on the subject. So successfully were Lord Elgin's negotiations conducted, that in a letter dated 12th June, 1854, he was able to announce that he had executed a Treaty with Mr. Secretary Marcy relative to Fisheries and Reciprocity of Trade between the United States and the British Provinces in North America. This was the Reciprocity Treaty signed on the 5th June, 1854, and confirmed by the United States Senate on the 3d August of the same year. Its main provisions were as follows:

British waters on the east coast of North America were thrown open to United States citizens, and United States waters north of the 36th degree of north latitude were thrown open to British fishermen; excepting always the salmon and shad fisheries (which were exclusively reserved to the subjects of each country), and certain rivers and mouths of rivers to be determined by a Commission to be appointed for that purpose. Certain articles of produce of the British

Colonies and of the United States were admitted to each country, respectively, free of duty. The Treaty was to remain in force for ten years, and further for twelve months after either party should have given notice to the other of its wish to terminate the same.

Some difficulty was experienced in regard to Newfoundland, but at length a clause was agreed to, providing that if the Imperial Parliament of Great Britain, the Provincial Parliament of Newfoundland, and the Congress of the United States should agree that Newfoundland should be included, all the provisions and stipulations of the Treaty should apply to that Colony.

The Commission for the designation of the places reserved to each country from the common right of fishing met subsequently, and was engaged for some years in determining the places to which the exclusive right of fishing applied. It is, however, unnecessary here to do more than notice this fact, as the reservations in question are expressly mentioned under Article XX of the Treaty of Washington of 1871.

From the year 1854 until 1865 the Reciprocity Treaty continued in force, and no further difficulties appear to have arisen on questions connected with the Fisheries; but on the 17th of March of that year, Mr. Adams, the United States Minister in England, informed the British Government that he was instructed to give notice that at the expiration of twelve months from that day the Reciprocity Treaty was to terminate. This notice was given in pursuance of a Resolution of Congress approved by the President of the United States.

Efforts were made on the part of Her Majesty's Government toward a renewal of the treaty, but these, from various reasons, proving unsuccessful, the Treaty came to an end on the 17th of March, 1866; and, as a consequence, the provisions of the Convention of 1818 revived on the same day, and remain in effect at the present moment, except in so far as they are affected by the stipulations of the Treaty of Washington of 1871.

In the mean time a notice had been issued by Lord Monck warning the citizens of the United States that their right to fish in British waters would cease on the 17th of March, 1866; and it became necessary to consider what measures should be adopted for the protection of British rights. Her Majesty's Government were very desirous to prevent, as far as possible, the injury and loss which must be inflicted upon citizens of the United States by a sudden withdrawal of the privileges enjoyed by them for twelve years; but with every desire in this direction, they found themselves bound by acts both of the Imperial and Colonial Legislatures to enforce severe penalties upon all persons, not being British subjects, who might be found fishing within British jurisdiction.

Eventually, however, on the suggestion of Lord Monck, it was decided that American fishermen should be allowed during the year 1866 to fish in all provincial waters upon the payment of a nominal license fee, to be exacted as formal recognition of right. This system, after being maintained for four years, was discontinued, owing to the neglect of American fishermen to provide themselves with licenses; and in 1870 it again became necessary to take strict measures for the enforcement of British rights. Orders were given to Admiral Wellesley to dispatch a sufficient force to Canadian waters to insure the protection of Canadian fishermen and the maintenance of order,

and to instruct the senior officer of such force to co-operate cordially with any United States force sent on the same service. It was also found necessary to employ a local marine police force for the same purpose.

The result of these measures was the capture and forfeiture of several American vessels for infringing the provisions of the Convention of 1818, both by fishing within British waters and by frequenting Canadian ports for objects not permitted by the Convention, and notwithstanding the steps taken by the British Government to mitigate as far as possible the stringency of the orders given for the exclusion of American fishermen from British waters, it was found at the close of the season of 1870 that many seizures of American vessels had been made by cruisers both of the Imperial and Dominion Governments.

The difficulties caused by these untoward events subsequently led to the reopening of negotiations for the settlement of questions connected with the Fisheries.

It is unnecessary here to relate the circumstances which led to the appointment of the Joint High Commission in 1871. Suffice it to say that, towards the end of 1870 Sir John Rose, having been commissioned to proceed in an unofficial character to Washington for the purpose of ascertaining the views of the United States on the subject, was able in the month of February, 1871, to announce that the United States Government were prepared to refer all questions between the two countries to a Joint High Commission.

The Commissioners held their first meeting at Washington, on the 27th February, 1871, and the treaty was signed on the 8th of May of the same year.

FISHERY ARTICLES OF THE TREATY OF WASHINGTON.

The articles in this treaty relating to the Fisheries, and in virtue of which this commission is constituted, are Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXXII, and XXXIII. They are as follows:

[Here follow the Articles.]

The acts necessary to enable these articles to be carried into effect were passed by the Imperial Parliament of Great Britain on the 6th August, 1872; by the parliament of Canada on the 14th June, 1872; by the legislature of Prince Edward Island (which did not at that time form part of the Dominion) on the 29th June, 1872; and by the United States Congress on the 25th of February, 1873. A proclamation, dated Washington, 7th June, 1873, fixes the 1st of July of that year as the day on which these articles should come formally into operation.

Some difficulties having arisen in the case of Newfoundland, it was not until the 28th of March, 1874, that the necessary act was passed by that colony; and a proclamation issued on the 29th of May, of the same year, fixed the 1st day of June, 1874, as the day on which the Fishery Articles of the Treaty of Washington, so far as they relate to Newfoundland, should come into effect.

In the case of Canada, it was deemed advisable to admit American fishermen to the practical use of the privileges specified in

the treaty in advance of the formal legislative acts necessary for that purpose. An official communication to that effect was made early in 1873, and by a circular from the United States Treasury Department, dated 1st April, 1873, American fishermen at once availed themselves of the freedom of Canadian inshore waters. This was fitly acknowledged by the United States Government as "a liberal and friendly" act on the part of the Dominion Government. A similar concession had been previously made by the government of Prince Edward Island, who admitted American fishermen to the practical freedom of their waters on the 24th of July, 1871.

The Treaty of Washington having been ratified, it became necessary to take steps for the constitution of the Commission appointed to meet at Halifax, in the manner prescribed by the treaty, and in the mean while, Her Majesty's Government having appointed their Agent to the Commission, he proceeded to Washington, and some negotiations were entered into with a view to substitute an arrangement with respect to reciprocal free trade between Canada and the United States, for the award of the Commissioners, as provided under Article XXII of the treaty; it being always distinctly understood that, in case of the failure of such negotiations, the rights of Her Majesty's Government with respect to the appointment of the Commission should in no way be prejudiced. These negotiations having led to no result, it became necessary to revert to the terms of the treaty, and to take steps for the constitution of the Commission in the manner prescribed by it.

Having thus stated the circumstances which led to the conclusion of the Fishery Articles of the Treaty of Washington, having recited those articles and enumerated the legislative enactments which have been passed for the purpose of rendering them effective, it is submitted that, in order to estimate the advantages thereby derived respectively by the subjects of the United States and of Great Britain, the following basis is the only one which it is possible to adopt under the terms of the first portion of Article XVIII of the Treaty of Washington, of 1871, viz: That the value of the privileges granted to each country respectively by Articles XVIII, XIX, and XXI of that treaty, *which were not enjoyed under the 1st Article of the Convention of the 20th October, 1818*, is that which this Commission is constituted to determine.

Article I of the Convention of the 20th October, 1818, provides that—

[Here follows the Article.]

Such was the respective position of each country under the Convention of 1818 on matters connected with the fisheries; and it now remains to state precisely what additional liberties are acquired by each under the Treaty of Washington.

Article XVIII and XXI of the Treaty of Washington superadd to the privileges conferred upon United States citizens by the Convention of 1818—

"(1.) The liberty to take fish of every kind, except shellfish on the sea-coasts and shores, and in the bays, harbors, and creeks, of the provinces of Quebec, Nova Scotia, and New Brunswick, and the colony of Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the

shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets or curing their fish: *Provided*, That in so doing they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

"(2) The admission into Canada of 'fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States,' free of duty.

"(3) The enjoyment of these privileges to continue during a period of twelve years certain.

"Similar privileges are granted by Article XXXII in regard to the colony of Newfoundland.

"Articles XIX and XXI confer the following privileges upon British subjects:

"(1) The liberty to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbors, and creeks of the said sea-coast and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States, and of the islands aforesaid, for the purpose of drying their nets and curing their fish: *Provided*, That in so doing they do not interfere with the rights of private property or with the fishermen of the United States in the peaceable use of any part of the said coast in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that salmon and shad fisheries, and all other fisheries, in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

"(2) The admission into the United States of 'fish-oil and fish of all kinds (except fish of inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the Dominion of Canada or of Prince Edward Island,' free of duty.

"(3) The enjoyment of these privileges to continue during a period of 12 years certain.

"Article XXXII extends the above-mentioned privileges, so far as they are applicable to the colony of Newfoundland."

Upon this basis Great Britain asserts that the privileges specified in Article XVIII of the Treaty of Washington of 8th May, 1871, exceed in value the privileges specified in Articles XIX and XXI. This assertion is made upon the following grounds, which, for convenience of argument, have been divided into two parts. Part I deals exclusively with the case of the Dominion of Canada. Part II deals exclusively with the case of the colony of Newfoundland.

PART I.—CANADA.

CHAPTER I.—*Extent and value of Canadian fisheries.*

It will probably assist the Commission in arriving at a just estimation of the intrinsic worth of the concurrent fishing privileges accorded to the United States citizens by the Treaty of Washington to refer briefly to the extent and value of the sea-coast fisheries of the maritime provinces of Canada, as evidenced in part by the profitable operations of British fishermen.

The districts within which British subjects carry on fishing on the coasts, and in the bays, harbors, and creeks of Canada, extend from the Bay of Fundy to the Gulf of Saint Lawrence, inclusive. The superficial area of these extensive fishing grounds, as shown on the accompanying map, comprises many thousands of square miles, forming the home of a great variety of the most prolific and valuable of sea-fish, the capture of which contributes in an important degree to British and American commerce, and supplies vast quantities of food to several millions of people. The chief of these fish, in the pursuit of which British subjects and United States citizens now participate in common under treaty arrangements, are mackerel, codfish, herring, halibut, haddock, hake, pollack, and many of the smaller varieties taken principally for bait.

It appears by the subjoined statement (Appendix A) that the produce of these fisheries caught by British subjects has greatly increased during seven years past. Their steady development and increasing wealth, as shown by this return, proves that a very considerable amount of industry and enterprise is embarked therein, and also that they are capable of still further expansion. This marked improvement in their condition and yield for the period specified in the table is an important circumstance in relation to the present inquiry. It shows that, as an article of commerce and a source of food, their actual productiveness keeps pace with the yearly increasing demand made on them for all the purposes of foreign and domestic trade and of local consumption. Also, they are now of much greater value than they were during the existence of the reciprocity treaty. The admission of American fishermen to concurrent rights under the Treaty of Washington is, therefore, in every respect highly advantageous to the United States citizens.

CHAPTER II.—*Advantages derived by United States citizens.*1. *Liberty of fishing in British waters.*

Liberty to prosecute freely the sea fisheries "on the coasts and shores and in the bays, harbors, and creeks" of Canada is in itself a very valuable concession to United States citizens. It concedes the common use of extensive and productive fishing-grounds, which are readily accessible to American fishermen, and are advantageously situated as regards their home market. The full value of this important concession can be but imperfectly determined by reference merely to the precise number of vessels and fishermen engaged in the business of fishing in these waters, or to the exact quantity of fish taken therefrom in the course of each successive season. Doubtless

the amount of capital thus invested, the employment afforded, the trade and industry thereby promoted, and the necessary food supplied will be justly regarded by the Commission as forming material elements in the calculation of probable benefits derived by the American nation; but as it is desirable to refer to such specific data as may fairly establish the equitable foundation and practical character of the present claim, we propose to show, by such evidence as the case admits—

(1) The number of United States fishing-vessels frequenting these waters;

(2) The kinds and quantities of fish it is customary for them to take, and the profits accruing to them thereby;

(3) The amount of capital embarked in these operations, and other advantages accruing to United States citizens thereby;

First. The official records of the United States Government show that in 1868 the "enrolled and licensed" vessels engaged in the cod and mackerel fisheries numbered 2,220; in 1869 there were 1,714 vessels so employed; in 1870 their numbers were 2,292; in 1871 there were 2,426 vessels thus engaged; and in 1872 there were 2,385.

The classification of decked fishing-vessels in the United States is confined nominally to the cod and mackerel fisheries, but no doubt includes such vessels as embark also in the herring, halibut, haddock, hake, pollack, and bait fisheries on the coasts of Canada. There are certainly fluctuations from year to year in the number of vessels engaged, as well as in the success of their respective voyages, but there is a remarkable concurrence in the statements made by various informants that an average number, ranging between 700 and 1,200 of the United States vessels have annually resorted to British waters for fishing purposes for many years past.

These vessels are variously occupied on the shores of Canada throughout each season. Some of them resort to the Gulf of Saint Lawrence from early spring-time to late autumn in pursuit of cod, mackerel, herrings, and halibut. Others frequent the western coast of Nova Scotia and the Bay of Fundy throughout the season. During the existence of the Reciprocity Treaty, when free access was afforded to British waters, it was admitted by an American authority, Mr. E. H. Derby, that about 600 of these vessels fished every year for mackerel alone on the gulf coasts of Canada; and it is probable that as many more fished along the Atlantic coasts of Canada, and also on the banks and ledges off shore. Captain Scott, R. N., commanding the marine police, and Captain Nickerson, of the same force, both state that as many as 1,200 United States fishing-vessels have been known to pass through the Gut of Canso in a single season. Inspector Venning states that during the existence of the Reciprocity Treaty the annual number was from 1,200 to 1,500. The executive council of Prince Edward Island, in a minute dated 17th February, 1874, states that 1,000 sail of United States vessels were engaged in the mackerel fishery alone in the year 1872. The former commander of the government cruiser *La Canadienne*, in his report for 1865, estimates that there were in that year from 1,050 to 1,200 American vessels engaged exclusively in the mackerel fishery of the Gulf of Saint Lawrence. Subsequently, in 1866, the actual number of United States vessels duly licensed by the Canadian Government, on passing through the Gut of Canso for the inshore mackerel fisheries, was

454 as shown by official returns of the local collectors of customs. The exact number of other vessels which then refused to take out licenses on the pretext that they intended fishing in outside waters, was not, of course, recorded; but we are justified in assuming from the observations of qualified persons, whose oral or written testimony will be offered to the Commission if required, that at least 600 more were also engaged in the mackerel and other fisheries in British waters.

It is stated in the annual report of the United States Secretary of the Treasury for 1871 that "The district of Gloucester is most extensively engaged in this occupation; her cod and mackerel fleet, amounting to 548 vessels, 28,569 tons, showing an increase of 97 vessels since June 30, 1870." The same authority states in the annual report for 1872 that "the tonnage employed in the cod and mackerel fisheries has increased somewhat for the past three years."

Thirty-nine new fishing vessels were built at the port of Gloucester, Mass., alone, in 1874, and about fifty more were to be built in the next following year; and as there are several other important outfitting ports in the same State, besides many others in the States of Maine, New Hampshire, Rhode Island, Connecticut, and New York, it is fair to infer that a corresponding increase in the fishing-fleet from these numerous ports will also take place now that the Canadian fisheries are reopened to their vessels. These five States added 243 schooners to their fishing-fleet in 1866, when the inducements to build were less certain. There is therefore good reason to anticipate that in the course of the twelve years stipulated in the present treaty, a still greater impetus will be given to the fishing industry and commerce of the United States. Such a result may be more confidently expected in consequence of the rapid increase of population and extension of settlements, the more numerous markets opened up by railway enterprises, and the growing demand for fish-food from the seaboard to replace the failing supplies from inland waters.

The withdrawal of New England tonnage from the whale fishery, in consequence of the rapid decline of that pursuit as a paying adventure, will most likely have the effect of engaging other sail in the more lucrative branches of marine industry. Mr. R. D. Cutts, in an able report to the United States Government on the political importance and economic conditions of the fisheries, expresses some apprehension of the imminent failure of the cod and other fisheries on the Grand Banks. Should such ensue, it would probably engage additional tonnage in the inshore fisheries around the coasts of Canada.

We are therefore warranted in reckoning a yearly average number of vessels as availing themselves of the privileges accorded to United States citizens by the Treaty of Washington at about 1,000 reserving the right to show the probability of a still larger number being so engaged.

Second. American fishermen pursue their calling around the islands and in the harbors of the Bay of Fundy, and along parts of the coasts of Nova Scotia and New Brunswick bordering the said bay; down the south coast of Nova Scotia, and around the island of Cape Breton; thence through the Strait of Canso, along the northern coast of Nova Scotia and New Brunswick; thence through the Strait of Northumberland, and all around Prince Edward Island, particularly

on its western, northern, and eastern coasts, resorting especially to the bays and harbors of the southern shore to transship cargoes and procure supplies; thence into Miramichi Bay, the Bay of Chaleur, and Gaspé Bay; thence around the Magdalen Islands and Anticosti Island; thence up the south shore of the River Saint Lawrence to Father Point, and down the north shore of the river and gulf of Saint Lawrence from Point des Monts to Blanc Sablon Bay. These localities abound with codfish, mackerel, herrings, halibut, haddock, pollack, hake, and a variety of other and smaller fishes used expressly for bait, such as spring-herring, capelin, smelts, sandlaunce, gaspereaux, also such bait as squid and clams. These are the principal descriptions of fish captured by United States citizens in British waters. They generally frequent the inshores, and are there caught in the largest quantities and of the finest quality, and with greater certainty and facility than elsewhere. A considerable portion of the cod-fish taken by American fishermen is doubtless caught on the banks and ledges outside, such as Green, Miscou, Bradelle, and Orphan Banks, and within treaty limits around the Magdalen Islands, and on the southern coast of Labrador. Latterly it has been the practice to use cod-seines close inshore, and to fish with trawls and lines near the coast of Nova Scotia, New Brunswick, Quebec, and Anticosti. There is also a small portion of the other fishes named taken at various distances from the shore.

A majority of the fishing-fleet frequenting British waters being fitted almost exclusively for the mackerel fishery, that pursuit will be first considered as to the quantity taken by each vessel. In an ordinary voyage or "trip" from an American port to the Gulf fishing-grounds and back, without the liberty of resorting freely to the bays, creeks, and harbors and the inshores generally, to fish, refit, transship, &c., but with only illicit opportunities to use these privileges, the profits of each vessel would be comparatively insignificant; but being privileged to fish, and to land and refit, and to transfer each fare to steamers or railways in Canada, and afterward to replenish stores and resume operations, the vessels would return immediately, while the fishing was good, to catch a second fare, which is similarly disposed of, and would often make a third trip before the season closes. Captain P. A. Scott, R. N., of Halifax, Nova Scotia, states that these facilities, combined with freedom of inshore fishing, enable each mackerelman to average about 800 barrels per season, worth \$12,100. Captain D. M. Brown, R. N., of Halifax, makes the same statement. Captain J. A. Tory, of Guysboro, Nova Scotia, states that it is common, with such advantages, for each vessel to catch from 1,000 to 1,500 barrels of mackerel in three trips. Mr. E. H. Derby estimates the catch of vessels "in the mackerel business from 500 to 700 barrels." Mr. William Smith, late controller of customs at St. John, New Brunswick, now deputy minister of marine and fisheries, computes the catch of mackerel by American vessels at 10 barrels per ton. The late Mr. M. H. Perley, Her Majesty's Commissioner under the treaty of 1854, reports in 1849 having accosted five United States vessels actively fishing about three miles from Paspebiac, in Chaleur Bay, and several in Miramichi Bay, having upward of 900 barrels of mackerel each. It appears from a return made by the collector of customs at Port Mulgrave, in the

Gut of Canso, that among 135 vessels of the American mackerel fleet which were casually spoken at that port in 1873, the names of which he gives, there were 33 having over 300 barrels apiece, 55 having over 400 barrels each, 28 having over 500 barrels each, 12 having over 600 barrels each, and 7 having over 700 barrels apiece. Probably these were not the largest fares secured, as the vessels were reported before the fall fishery (usually the best) had taken place. In the year 1874, 164 United States fishing-vessels took, at the east point of Prince Edward Island, 383 barrels per vessel. The catch of mackerel in that season by the island fishermen, who are few in numbers, and fish mostly in open boats and with seines, was altogether inshore, and amounted to 27,317 barrels.

We may confidently state that, at a very moderate computation, each American fishing-vessel frequenting British waters obtains, through the privileges conferred by the treaty, a catch of at least 300 barrels of mackerel alone, worth \$12 per barrel, at each trip, or a gross value of \$3,600 per vessel.

The proportion of codfish taken and forming a part of the mixed fares would be comparatively small when distributed among a large number of vessels fishing principally for mackerel and herring. It is estimated that vessels fishing for cod, herring, and other fish during the intervals of mackereling usually take, of herring, 300 barrels; codfish, 100 quintals; halibut, 200 quintals; haddock, pollack, and hake, 100 quintals, and bait-fishes (exclusive of herring, used fresh), \$200 worth, each vessel averaging about \$2,000 worth in all. Many of these vessels, or others of smaller tonnage, are engaged in fishing around the western coasts of Nova Scotia and in the Bay of Fundy, both before and after their regular voyages to the eastern and Gulf fishing grounds. But the maximum number of vessels and the value of catch reckoned in this claim, for the purpose of stating a basis of computation, without prejudice, however, to whatever addition to the number of vessels engaged and the quantity and value of fish caught may be substantiated in further evidence, does not specifically include the catch of those smaller vessels which are constantly occupied in the inshore fishings of the western coasts of the maritime provinces for other kinds besides mackerel. This reservation is necessarily due, if not to the moderation of the claim involved, at all events to the obvious difficulty of ascertaining with exactness the movements and operations of a fleet of foreign vessels, of varied tonnage, numbering between 1,000 and 3,000, besides the many small boats attached, which are continually moving about in different and distant localities, or frequenting throughout each season the countless indentations of a sinuous coast nearly 4,000 miles in linear extent.

In recapitulation of the above, it is estimated that each United States fishing-vessel will, on a moderate computation, take within British Canadian waters \$3,600 worth of mackerel, and \$2,000 worth of other fish; or a total of \$5,600 worth of fish of all kinds as an average for each trip. This estimate is, however, made, as stated in the case of the number of vessels engaged, without prejudice to any larger catch per vessel, which we may be able to substantiate in evidence before the Commission.

Third. The estimated amount of capital embarked in this business by United States citizens exceeds \$7,000,000. Mr. Lorenzo Sabine,

formerly President of the Boston Board of Trade, estimates it at \$7,280,000. It employs about 16,000 men afloat, besides many others ashore. That the investment is a profitable one is proved by the large amount of vessels and men engaging in it, and also the more costly appliances which are provided in these fishing pursuits. If the construction and equipment of vessels for the various fisheries which United States citizens so persistently follow in British waters was not proved to be highly advantageous, it is reasonable to assume that it would cease to engage a large amount of capital, for the use of which so many other attractive enterprises exist. It must be concluded, therefore, that the inshore fisheries afford never-failing occupation for men and money preferable to many other lucrative industries.

The advantages resulting to the commerce and supply of United States citizens generally from the privileges to which American fishermen are admitted by this treaty are most important. The demand for fish-food in all parts of the American Union is yearly increasing, and immense efforts are now being made to supply this want. A population already exceeding 40,000,000, constantly augmenting in numbers by immigration from foreign countries, and where the people consume the products of the sea to a very large extent, requires much more of this kind of food than the failing fisheries of the United States can now produce. Their productive power is no longer equal to the consumptive capacity of the nation. The rapid means of transport, and the improved methods of preservation now available, are fast bringing the inhabitants of the interior practically within easy reach of the seaboard; and fish of all kinds, even the most inferior descriptions, and qualities not hitherto saleable, are required to supply the public want. The magnitude of the present fish-trade of the United States is hardly conceivable from the meagre and partial statements derived from official returns. These tables publish only the "products of American fisheries received into the customs district," which form but a small proportion of the enormous quantities of fish landed from United States boats and vessels, and much of which is obtained from the seacoasts of Canada.

We have referred elsewhere to reports made by American officials regarding the deteriorated condition of the fisheries, on the coasts of the New England States. They affirm that owing to such decline "the people are obliged to resort to far-distant regions to obtain the supply which formerly could be secured almost within sight of their homes." The above state of things already renders it necessary for United States citizens to secure access to Canadian fisheries; and the growing demand for local consumption before mentioned, apart from the requirements of their foreign trade, must tend greatly to increase this necessity.

Were United States citizens unable to supply such an extensive demand in consequence of being precluded from fishing in British Canadian waters, it would no doubt be supplied through British subjects, who would also catch more fish in their own exclusive waters than if fishing in the same limits concurrently with American fishermen. This consideration, therefore, forms an additional reason for the compensation which we now claim.

2. *Liberty to land for the purpose of drying nets, curing fish, &c.*

The privileges secured to United States subjects in this respect by the Treaty of Washington are the liberty to land for purposes connected with fishing on the coasts of Labrador, the Magdalen Islands, and the other portions of the seaboard of the Dominion of Canada. As the rights thus secured to United States fishermen for a period of twelve years vary somewhat in the different localities above named, it will be well to consider them separately.

Under the convention of 1818, United States citizens were privileged to fish on certain parts of the coast of Labrador, but were restricted in the liberty of drying and curing fish to unsettled places. Such districts as were then occupied, or might subsequently become settled, were reserved for the exclusive use of British fishermen, and rights and properties possessed by the Hudson's Bay Company were likewise reserved from common user. Gradual settlement during fifty years past has filled up nearly all available landing places along the southern coast of Labrador, between Blanc Sablon and Mount Joly; and the establishments maintained by the Hudson's Bay Company, whose rights and privileges are now acquired by Canada, have confirmed the exclusive occupancy contemplated by the Convention. Under such altered circumstances United States fishermen might have been excluded under the terms of the Convention from using these landings, without the free use of which the fisheries cannot be profitably pursued. The fish taken in these waters include herring, codfish, and sometimes mackerel, which are seined on the main shore, and among the islands throughout that region, and the famous "Labrador herring", which abounds there.

The Convention of 1818 entitled United States citizens to fish on the shores of the Magdalen Islands, but denied them the privilege of landing there. Without such permission the practical use of the inshore fisheries was impossible. Although such permission has tacitly existed, as a matter of sufferance, it might at any moment have been withdrawn, and the operations of United States fishermen in that locality would thus have been rendered ineffectual. The value of these inshore fisheries is great; mackerel, herring, halibut, capelin, and launce abound, and are caught inside of the principal bays and harbors, where they resort to spawn. Between three hundred and four hundred United States fishing-vessels yearly frequent the waters of this group, and take large quantities of fish, both for curing and bait. A single seine has been known to take at one haul enough of herrings to fill 3,000 barrels. Seining mackerel is similarly productive. During the spring and summer fishery of the year 1875, when the mackerel were closer inshore than usual, the comparative failure of the American fishermen was owing to their being unprepared with suitable hauling-nets and small boats, their vessels being unable to approach close enough to the beaches.

In the case of the remaining portions of the seaboard of Canada, the terms of the Convention of 1818 debarred United States citizens from landing at any part for the pursuit of operations connected with fishing. This privilege is essential to the successful prosecution of both the inshore and deep-sea fisheries. By it they would be enabled to prepare their fish in a superior manner, in a salubrious climate, as well as more expeditiously, and they would be relieved of a serious

embarrassment as regards the disposition of fish offals, by curing on shore the fish which otherwise would have been dressed on board their vessels, and the refuse thrown overboard.

All the advantages above detailed have been secured for a period of twelve years to United States fishermen. Without them, fishing operations on many parts of the coast would be not only unremunerative but impossible; and they may therefore be fairly claimed as an important item in the valuation of the liberties granted to the United States under Article XVIII of the Treaty of Washington.

3. Transshipping cargoes and obtaining supplies, &c.

Freedom to transfer cargoes, to outfit vessels, buy supplies, obtain ice, engage sailors, procure bait, and traffic generally in British ports and harbors, or to transact other business ashore, not necessarily connected with fishing pursuits, are secondary privileges which materially enhance the principal concessions to United States citizens. These advantages are indispensable to the success of foreign fishing on Canadian coasts. Without such facilities, fishing operations, both inside and outside of the inshores, cannot be conducted on an extensive and remunerative scale. Under the Reciprocity Treaty, these conveniences proved very important, more particularly as respects obtaining bait and transferring cargoes. The American fishermen then came inshore everywhere along the coast, and caught bait for themselves, instead of requiring, as previously, to buy, and preserve it in ice, saving thereby much time and expense. They also transshipped their fish and returned with their vessels to the fishing-ground; thus securing two or three fares in one season. Both of these, therefore, are distinct benefits. There are other indirect advantages attending these privileges, such as carrying on fishing operations nearer the coasts, and thereby avoiding risks to life and property, as well while fishing as in voyaging homeward and back; also having always at command a convenient and commodious base of operations. They procure cheap and regular supplies without loss of time, enabling them always to send off their cargoes of fish promptly by rail and steamers to meet the current market demand for domestic consumption or foreign export, instead of being compelled to "beat up" to Gloucester or Boston with each cargo, seldom returning for a second; and it may be remarked that all their freight-business in fish from provincial ports is carried on in American bottoms, thus creating a profitable business for United States citizens.

The advantages above described of being able to make second and third full fares, undoubtedly, in most instances, double the catch which can be made in British Canadian waters by a vessel during one season, and it therefore may be reasonably estimated that it enables United States fishermen to double their profits.

4. Formation of fishing establishments.

The privilege of establishing permanent fishing stations on the shores of Canadian bays, creeks, and harbors, akin to that of landing to dry and cure fish, is of material advantage to United States citizens. Before the Treaty the common practice with American vessels was to take away their cargoes of codfish in a green state and

to dry them at home. Those codfish caught on the banks off-shore are usually fine, well-conditioned fish, but, being cured in bulk instead of being cured or packed ashore, are of inferior value. Apart from the fishing facilities and business conveniences, thus afforded to Americans for prosecuting both the deep-sea and inshore fisheries, there are climatic advantages connected with this privilege of a peculiar nature, which attach to it a special value. It is a fact universally known and undisputed, that codfish, for example, cured on our coasts, command a much higher price in foreign markets than those cured in the United States. This is due in a great measure to the salubrity of the climate and the proximity of the fishing grounds. Permanent curing establishments ashore also enable the fishermen to obtain more frequent "fares," and the dealers to carry on the business of curing and shipping on a much more extensive and economic scale, than if their operations were conducted afloat. There are further advantages derivable from permanent establishments ashore, such as the accumulation of stock and fresh fish preserved in snow or ice, and others kept in frozen and fresh state by artificial freezing; also, the preservation of fish in cans hermetically sealed. The great saving of cost and of substance, and the rapid preparation of a more saleable, more portable, and more nutritive article of food, which commend these improved methods of treating edible fishes to general adoption, will, undoubtedly, induce enterprising dealers to avail themselves very extensively of the remarkable opportunities which free access, and an assured footing on Canadian coasts, are calculated to afford. The broad effect of these increased facilities is to be found in the abundant and increasing supply to the American public of cheap and wholesome fish, which supply would certainly diminish or fail without the advantages secured by the Treaty of Washington.

5. Convenience of reciprocal free market.

A reciprocal free market for any needful commodity, such as fish, entering extensively into daily consumption by rich and poor, is so manifest an advantage to everybody concerned, the producer, the freighter, the seller, and consumer alike, that the remission of Canadian duties on American-caught fish imported into Canada cannot, in our opinion, form a very material element for consideration. The benefits conferred by a cheap and abundant supply of food are evident, especially to countries where, as in the United States and Canada, the chief necessities of life are expensive, and it is so desirable to cheapen the means of living to the working classes.

6. Participation in improvements resulting from the Fisheries Protection Service of Canada.

In addition to the statutory enactments protecting the Canadian fisheries against foreigners, and regulating participation in them by the United States citizens, under treaty stipulations, the provincial governments have for many years past applied an organized system of municipal protection and restriction designed to preserve them from injury and to render them more productive. A marked increase in their produce during the last decade attests the gratifying results of these measures.

A large number of fishery officers is employed by the Government of the Dominion in the maritime states at an annual cost of about \$75,000. This staff is actively engaged under an organized system controlled by the department of marine and fisheries, in fostering and superintending fish culture in the rivers and estuaries. Regulations are enforced for the protection of these nurseries, and considerable expense has been incurred in adapting and improving the streams for the reproduction of river fish.

The intimate connection between a thriving condition of river and estuary fishings and an abundant supply in the neighboring deep-sea fisheries has not, perhaps, as yet been sufficiently appreciated. It is, however, obvious that the supply of bait-fishes thus produced attracts the deep sea-fish in large numbers. Their resort is consequently nearer inshore than formerly, and the catch of the fishermen who have the privilege of inshore fishing is proportionately increased, while they pursue their operations in safer waters and within easier reach of supplies. In addition to the measures above described for the increase of the fisheries, special care has been devoted to the protection of the spawning-grounds of sea fishes, and the inshores now swarm with valuable fish of all kinds, which, owing to the expense incurred by the Canadian Government, are now abundant in places hitherto almost deserted.

It will also be necessary for the proper maintenance of these improvements and for the preservation of order in the fishing-grounds, as well in the interest of the United States as of the Canadian fishermen, to supplement the existing fisheries service by an additional number of officers and men, which will probably entail an increase of at least \$100,000 on the present expenditure.

In all these important advantages produced by the restrictions and taxation imposed on Canadians, United States fishermen will now share to the fullest extent, without having as yet in any way contributed toward their cost; it may then fairly be claimed that a portion of the award to be demanded of the United States Government shall be in consideration of their participation in the fruits of additional expenditure borne by Canadians to the annual extent, as shown above, of nearly \$200,000.

SUMMARY.

The privileges secured to United States citizens under Article XVIII of the Treaty of Washington, which have been above described particularly and in detail, may be summarized as follows:

1. The liberty of fishing in all inshore waters of the Dominion; the value of which shown by the kinds, quantity, and value of the fish annually taken by United States fishermen in those waters, as well as by the number of vessels, hands, and capital employed.
2. The liberty to land for the purpose of drying nets and curing fish, a privilege essential to the successful prosecution of fishing operations.
3. Access to the shores for purposes of bait, supply, &c., including the all-important advantage of transferring cargoes, which enables American fishermen to double their profits by securing two or more full fares during one season.

4. Participation in the improvements resulting from the fisheries service maintained by the Government of the Dominion.

The above privileges may be considered as susceptible of an approximate money valuation, which it is respectfully submitted should be assessed as well with reference to the quantity and value of fish taken, and the fishing-vessels and fishermen employed, as to other collateral advantages enjoyed by United States citizens.

It has been stated in the preceding portions of this chapter that an average number of at least 1,000 United States vessels annually frequent British Canadian waters. The gross catch of each vessel per trip has been estimated at \$5,600, a considerable portion of which is net profit, resulting from the privileges conferred by the treaty.

These privileges profitably employ men and materials representing in industrial capital several millions of dollars; the industries to the advancement of which they conduce support domestic trade and foreign commerce of great extent and increasing value; they also serve to make a necessary and healthful article of food plentiful and cheap for the American nation. It is not merely the value of "raw material" in fish taken out of British Canadian waters which constitutes a fair basis of compensation; the right of this fishery was an exclusive privilege, the sole use of which was highly prized, and for the common enjoyment of which we demand equivalents to be measured by our just estimation of its worth; we enhance the main concession on this point by according kindred liberties and indispensable facilities, all of which are direct advantages; and, in order to illustrate the assessable value of the grant, we adduce certain data relating to the number of United States fishing-vessels more immediately interested, and the gross quantity and value of their catch in British Canadian waters.

In addition to the advantages above recited, the attention of the Commissioners is respectfully drawn to the great importance attaching to the beneficial consequences to the United States of honorably acquiring for their fishermen full freedom to pursue their adventurous calling without incurring constant risks, and exposing themselves and their fellow-countrymen to the inevitable reproach of willfully trespassing on the rightful domain of friendly neighbors. Paramount, however, to this consideration is the avoidance of irritating disputes, calculated to disquiet the public mind of a spirited and enterprising people, and liable always to become a cause of mutual anxiety and embarrassment.

It was repeatedly stated by the American members of the Joint High Commission at Washington, in discussing proposals regarding the Canadian fisheries, "that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation." This commendable desire evidently was reciprocated by the British Commissioners in assenting to the proposition that the matter of disagreement as regards a money equivalent "should be referred to an impartial Commission." It should not be lost sight of that an offer for the reciprocal free admission of coal, salt, fish, and lumber had previously been made by the United States Commissioners, "entirely in the interest of a peaceful settlement," but was declined by the British Commissioners as inadequate. It is now shown that the contention of the British Commissioners regarding the "great value" of these fisheries

was well founded, and that the privileges subsequently accorded by the Treaty of Washington as in part compensatory are of no appreciable value.

It must be admitted, therefore, that the concessions made by Great Britain in the interests of American fishermen, quite irrespective of their commercial value, are indeed extremely valuable to the United States. Probably it will be said that in this respect there is an international gain. But it seems impossible for British subjects, if unmolested in their rights and privileges, to occasion any such irritation as the United States Commissioners expressed their anxiety to avoid. The provocation would be confined entirely to foreign intruders seeking their own gains at the cost and injury of British fishermen, thereby, perhaps, involving both nations in serious difficulties and incalculable expense. The duty (with its attendant cost) of guarding against any such vexations on the part of the United States citizens devolves solely on the American Government. If, to avoid the onerous responsibility of fulfilling it, and at the same time to secure for the inhabitants and trade of the country the concurrent use of these valuable privileges, the Government of the United States requires to pay fair equivalents, it certainly cannot be expected that Great Britain would abate the just estimation placed on them because of a mere assertion by the United States as beneficiary "that their value is overestimated," or that any further measure of concession is due to international amity. Great Britain claims to have fully reciprocated the desire expressed by the United States Commissioners; and being in possession of proprietary rights of special importance and value to herself, the mutual enjoyment of which was voluntarily sought on behalf of United States citizens, we are justified in asking the present Commission to consider these circumstances in determining the matter thus referred to equitable assessment under the present treaty.

CHAPTER III.—*Advantages derived by British subjects.*

1. *Liberty of fishing in United States waters and other privileges connected therewith.*

The privileges granted to British subjects by Article XIX of the Treaty of Washington are the same right of fishing and landing for purposes connected with fishing in United States waters, north of the 39th parallel of north latitude, as are granted to United States citizens in British North American waters. It may, at the outset, be stated that this concession is absolutely valueless.

That the several kinds of sea fishes formerly abundant on the northeastern sea-coasts of the United States have not merely become very scarce, but are in some localities almost extinct, is an unquestionable fact. An exhaustive investigation into the causes of their decline was commenced in 1871 by Professor Baird, the chief of the United States Fisheries Commission, and is still in progress. This eminently thorough and scientific investigator reports, substantially, that the failing supply of edible coast fishes is mainly due to over-netting and incessant fishing by other means. These causes, joined to continuous havoc made by predaceous fishes, have considerably

exhausted the coast fisheries along the southern and northern seaboard of the United States. The Fishery Commissioners of the State of Maine, in their reports for 1872-'74, indorse the official statements of the Federal Commissioner, that the sea fishes on the coast of New England have "almost entirely disappeared", and that "the people are obliged to resort to far-distant regions to obtain the supply which formerly could be secured almost within sight of their homes."

The following extracts from Professor Baird's report, published in 1873, are conclusive:

"In view of the facts adduced in reference to the shore fisheries, there can be no hesitation in accepting the statement that there has been an enormous diminution in their number, although this had already occurred to a considerable degree, with some species, by the beginning of the present century.

"The testimony everywhere, with scarcely an exception, both from line-men and trappers, was that the whole business of fishing was pretty nearly at an end, and that it would scarcely pay parties to attempt to continue the work on a large scale in 1873."

When the above statements are fairly considered, and when we also consider that the only remedy for this state of decline is to diminish the numbers and restrict the catchment powers of fishing-engines in use, it is highly improbable that any foreigner will resort to these waters for fishing purposes.

In a geographical sense, the fishery grounds thus formally opened to British subjects comprise about 2,000 square miles, distant and unproductive, and which, for these and other reasons, are practically unavailable to the British fisherman. It is shown above that the best United States authorities concur in opinion that these fisheries are rapidly becoming exhausted, affording scarcely remunerative employment for American fishermen, who have been themselves obliged to abandon these grounds and resort in large numbers to the more productive waters of Canada. It is as impossible to conceive in theory that British fishermen should forsake their own abundant waters to undertake a long and arduous voyage to those distant and unremunerative fisheries, as it is an undisputed matter of fact that they do not, and, in all probability, never will do so.

A similar concession embodied in the Reciprocity Treaty of 1854, which embraced three degrees more in a southerly direction, extending along the coasts of Delaware, Maryland, Virginia, and part of North Carolina, to the thirty-sixth parallel of north latitude, proved, during the twelve years it existed, of no practical value whatsoever, not a single British fisherman having utilized it.

The question of bait must now be considered, as some importance may perhaps be attached by the United States to the supposed advantages derived in this respect by British subjects. It might appear, at first sight, that the privilege of resorting to the inshores of the Eastern States to procure bait for mackerel fishing was of practical use. Menhaden are said to be found only in United States waters, and are used extensively in the mackerel fishing, which is often successfully pursued with this description of bait, especially by its use for feeding and attracting the shoals. It is, however, by no means indispensable; other fish-baits, plentiful in British waters, are quite as successfully used in this particular kind of fishing busi-

ness, and very generally in other branches, both of deep-sea and in-shore fishing, as, for example, fresh herrings, alewives, capelin, sand-lance, smelts, squids, clams, and other small fishes caught chiefly with seines close inshore. British fishermen can thus find sufficient bait at home, and can purchase from American dealers any quantities they require much cheaper than by making voyages to United States waters in order to catch it for themselves. It is a remarkable fact that for six years past American fishermen have bought from Canadians more herring-bait alone than all the menhaden bait imported into Canada during the same period. The menhaden bait itself can also be bred and restored to places in the Bay of Fundy, on the western coast of Nova Scotia, where it existed up to the time of its local extermination.

It is notorious that the supply both of food and bait fishes has become alarmingly scarce along the United States coast. At Gloucester alone some thirty vessels are engaged during about six months in each year catching menhaden for bait. They sell about \$100,000 worth annually, and, by catching them immoderately in nets and weirs for supplying bait and to furnish the oil-mills, they are rapidly exterminating them. The Massachusetts Fishery Commissioners, in their report for 1872, state that "It takes many hands working in many ways to catch bait enough for our fishing fleet, which may easily be understood when it is remembered that each George's man takes fifteen or twenty barrels for a trip; and that each mackereler lays from 75 to 120 barrels, or even more than that." One of the principal modes for the capture of bait and other fishes on the New England coast is by fixed traps or pounds on the shore. By means of these, herrings, alewives, and menhaden are caught as bait for the sea-fishery, besides merchantable fish for the markets, and the coarser kinds for the supply of the oil-factories. There are upward of sixty of these factories now in operation on the New England coast. The capital invested in them approaches \$3,000,000. They employ 1,197 men, 383 sailing-vessels, and 29 steamers, besides numerous other boats. The fish material which they consume yearly is enormous, computed at about 1,191,100 barrels, requiring whole fishes to the number of about 300,000,000. These modes of fishing for menhaden and other bait are furthermore such as to preclude strangers from participating in them without exceeding the terms of the treaty; and even without this difficulty, it must be apparent that such extensive native enterprises would bar the competition and suffice to insure the virtual exclusion of foreigners.

The attention of the Commissioners is therefore respectfully drawn to the following points:

1. The "sea fishery" is distant and unproductive.
2. The inshores are occupied to the fullest possible extent, and the supply, especially in the matter of bait, is rapidly becoming exhausted.
3. British fishermen have not, either during the Reciprocity Treaty or the Treaty of Washington, availed themselves of the freedom of fishing in the United States waters.

A careful consideration of these points will, we believe, lead to the conviction that in this respect no advantage whatever accrues to British subjects.

2. *Customs remissions by the United States in favor of Canada.*

The privilege of a free market in the United States for the produce of the fisheries of the Dominion of Canada, excepting fish of the inland lakes and tributary rivers, and fish preserved in oil, remains to be considered. It forms the only appreciable concession afforded by the treaty for the right of free fishery in British waters, and the collateral advantages derived by United States citizens. We have already adverted in paragraph 5 of chapter 2 of this Case to the mutual benefit of a reciprocal free market for fish. This is so clearly an advantage to all concerned, and particularly to the nation comprising the largest number of fishermen, traders, and consumers, that it cannot be contended that in this respect any advantage is conceded to Canada which is not participated in by the United States.

CONCLUSION.

For these and other reasons Her Majesty's Government, for the concession of these privileges in respect of the Dominion of Canada, claim, over and above the value of any advantages conferred on British subjects under the Fishery Articles of the Treaty of Washington, a gross sum of \$12,000,000, to be paid in accordance with the terms of the treaty.

PART II.—NEWFOUNDLAND

CHAPTER I.—*Introduction and description of Newfoundland fisheries.*

It has been already submitted, on page 15 of the introductory portion of this case, that the following basis is the only one which it is possible to adopt under the terms of the first part of Article XVIII of the Treaty of Washington, 1871, namely, that the value of the privileges granted to each country respectively by Articles XVIII, XIX, and XXI of that treaty, *which were not enjoyed under the 1st Article of the Convention of the 20th of October, 1818*, is that which this Commission is constituted to determine.

The position occupied by Newfoundland in regard to the right of fishing enjoyed by the United States citizens on her coasts is, however, in many points distinct from that of Canada, and it is desirable to state precisely how the case stands.

By Article I of the Convention of 1818 the inhabitants of the United States acquired "forever the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands; on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle-Isle, and thence northwardly indefinitely along the coast, and the liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, hereabove described, and the coast of Labrador; but so soon as the same, or any part thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled without previous agreement for such purpose with

the inhabitants, proprietors, or possessors of the ground; and the United States renounced forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the United States fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever; but they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein or in any other matter whatever abusing the privileges hereby reserved to them."

In addition to the privileges so enjoyed under the Convention of 1818, Articles XVIII and XXI of the Treaty of Washington granted to United States citizens:

(1) The liberty to take fish of every kind, except shellfish, on the remaining portion of the coast of Newfoundland, with liberty to land on the said coast for the purpose of drying their nets and curing their fish; provided, that in so doing they do not interfere with the rights of private property or with British fishermen in the peaceful use of any part of the said coast in their occupancy for the said purpose; the salmon and shad fisheries and all other fisheries in rivers and mouths of rivers being reserved exclusively for British fishermen.

(2) The admission into Newfoundland of fish-oil and fish of all kinds, except fish of the inland lakes and rivers falling into them, and except fish preserved in oil, being the produce of fisheries of the United States, free of duty.

The enjoyment of these privileges to continue for the period of twelve years certain.

In return for the privileges so granted to United States citizens, British subjects acquired under the same treaty—

1. Similar rights of fishing and landing on United States coasts north of the 39th parallel of north latitude; and,

2. The admission into the United States of fish-oil and fish of all kinds, except fish preserved in oil, being the produce of the fisheries of Newfoundland, free of duty.

These privileges are also to continue for a period of twelve years certain.

A reference to the accompanying map will show that the coast, the entire freedom of which for fishing purposes has thus been acquired by the United States for a period of twelve years, embraces that portion extending from the Rameau Islands on the southwest coast of the island eastward and northwardly to the Quirpon Islands. This coast contains an area of upwards of 11,000 square miles, including admittedly the most valuable cod-fisheries in the world. Fish of other descriptions, namely, herring, capelin, and squid, which are by far the best bait for the successful prosecution of the cod-fisheries, can be taken in unlimited quantities close inshore along the whole coast, whilst in some parts are turbot, halibut, and lance.[^a]

The subjoined tables (Appendix B) of the exports of fish from Newfoundland for the past seven years will show the enormous and

[^a Documents and Proceedings of the Halifax Commission, Vol. I, p. 100.]

increasing value of these fisheries; and the census returns also annexed (Appendix C) afford the clearest evidence, that the catch is very large in proportion to the number of men, vessels, and boats engaged in fishing operations on the coasts of Newfoundland, which have been thrown open to United States citizens under the Treaty of Washington.

In addition to the value, as shown above, of the inshore fisheries, the proximity of the Bank fisheries to the coast of Newfoundland forms a very important element in the present inquiry. These fisheries are situated at distances varying from 35 to 200 miles from the coast of Newfoundland, and are productive in the highest degree. Although they are open to vessels of all nations, their successful prosecution depends almost entirely in securing a commodious and proximate basis of operations. Bait, which can be most conveniently obtained in the inshore waters of Newfoundland, is indispensable, and the supply of capelin, squid, and herring is there inexhaustible for this purpose.

With reference to the importance which has from earliest times been attached to the value of the fisheries of Newfoundland, it is to be observed that a great portion of the articles in the treaties of 1783 and 1818 between Great Britain and the United States is devoted to careful stipulations respecting their enjoyment; and it will not escape the observation of the Commissioners that the privileges granted to United States fishermen in those treaties were always limited in extent, and did not confer the entire freedom for fishing operations which is now accorded by the Treaty of Washington, even on those portions of the coast which were then thrown open to them. Thus, whilst according the privilege of fishing on certain portions of the coast, the treaty of 1783 denied the right of landing to dry and cure on the shore, and the result was that, so far as concerned dried cod fish, the concession to the United States was of little or no advantage to them. It was indispensable to the production of a superior article of dried codfish that there should be a speedy landing and curing in a suitable climate. The climate of the United States is not adapted for this purpose, whilst that of Newfoundland is peculiarly suitable. This fact is evidenced by the United States having never competed with Newfoundland in foreign markets in the article of dried codfish, whilst they were debarred from landing on Newfoundland shores. Again, it is necessary for the prosecution of the fisheries, with reasonable prospects of lucrative results, that the fishermen should be in proximity to their curing and drying establishments.

The treaty of 1783 was annulled by the war of 1812, and the stipulations of Article I of the Convention of 1818, quoted *in extenso* on page 4 of this case, made important modifications in the privileges heretofore enjoyed by United States fishermen. Although they had, under this convention, the liberty of drying and curing fish upon the southern coast of Newfoundland from the Rameau Island to Cape Ray, it was confined to the unsettled bays, harbors, and creeks within these limits, and, it being provided that so soon as any portion thereof should be settled, the liberty should cease, the fishermen of the United States have been prevented, by the coast becoming generally settled, from availing themselves of the liberty so conceded. Previously, therefore, to the Treaty of Washington, United States fishermen did not interfere with the Newfoundland fishermen as

regards the article of dried codfish, although they prosecuted the herring-fishery at Bonne Bay and Bay of Islands on the western coast.

The question of the privileges of fishing on certain portions of the Newfoundland shores enjoyed by French fishermen does not come within the scope of this Commission, yet a passing allusion may be made to it. These privileges consist in the freedom of the inshore fisheries from Cape Ray northwardly to Quirpon Islands, and from thence to Cape John, on parallel 50° of north latitude; and the value attached to this right by the French Government is attested by their solicitude in maintaining it, and by the amount of French capital embarked in the prosecution of these fisheries. This affords another proof of the productiveness of the waters of the island.

CHAPTER II.—*Advantages derived by United States citizens.*

It will not be a matter of surprise that there should be an absence of exact statistical information when the facts are taken into consideration that, until the Washington Treaty, this vast extent of fishery was exclusively used by the people of Newfoundland—sparsely scattered over a long range of coast, for the most part in small settlements, between the majority of which the only means of communication is by water, and where, up to the present time, there was no special object in collecting statistical details. It is proposed, however, to show, by such evidence as will, it is believed, satisfy the Commissioners, the nature and value of the privileges accorded to the citizens of the United States under the Treaty of Washington. These may be conveniently divided into three heads, as follows:

- I. The entire freedom of the inshore fisheries.
- II. The privilege of procuring bait, refitting, drying, transshipping, and procuring supplies.
- III. The advantage of a free market in Newfoundland for fish and fish-oil.

The privileges granted in return to British subjects will be treated subsequently, and consist of—

1. The liberty of prosecuting fishing operations in United States waters north of the 39th parallel of north latitude; and,
2. The advantages of a free market in the United States for fish and fish-oil.

I. The entire freedom of the inshore fisheries.

Newfoundland, from that part of its coast now thrown open to United States fishermen, yearly extracts, at the lowest estimate, \$5,000,000 worth of fish and fish-oil, and when the value of fish used for bait and local consumption for food and agricultural purposes, of which there are no returns, is taken into account, the total may be fairly stated at \$6,000,000 annually.

It may possibly be contended on the part of the United States that their fishermen have not in the past availed themselves of the Newfoundland inshore fisheries, with but few exceptions, and that they would and do resort to the coasts of that island only for the purpose of procuring bait for the Bank fishery. This may up to the present time, to some extent, be true as regards codfish, but not

as regards herring, turbot, and halibut. It is not at all probable that, possessing as they now do the right to take herring and capelin for themselves on all parts of the Newfoundland coasts, they will continue to purchase as heretofore, and they will thus prevent the local fishermen, especially those of Fortune Bay, from engaging in a very lucrative employment which formerly occupied them during a portion of the winter season for the supply of the United States market.

The words of the Treaty of Washington, in dealing with the question of compensation, make no allusion to what use the United States may or do make of the privileges granted them, but simply state that, inasmuch as it is asserted by Her Majesty's Government that the privileges accorded to the citizens of the United States under Article XVIII are of greater value than those accorded by Articles XIX and XXI to the subjects of Her Britannic Majesty, and this is not admitted by the United States, it is further agreed that a Commission shall be appointed, having regard to the privileges accorded by the United States to Her Britannic Majesty's subjects in Articles Nos. XIX and XXI, the amount of any compensation to be paid by the Government of the United States to that of Her Majesty in return for the privileges accorded to the United States under Article XVIII.

It is asserted, on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that United States fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may not be inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease that the proprietor should be debarred from the recovery of his rent.

There is a marked contrast, to the advantage of the United States citizens, between the privilege of access to fisheries the most valuable and productive in the world, and the barren right accorded to the inhabitants of Newfoundland of fishing in the exhausted and preoccupied waters of the United States north of the thirty-ninth parallel of north latitude, in which there is no field for lucrative operations even if British subjects desired to resort to them; and there are strong grounds for believing that year by year, as United States fishermen resort in greater numbers to the coasts of Newfoundland for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries and their unlimited capacity for extension and development. As a matter of fact, United States vessels have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that, as the advantages to be derived from them become more widely known, larger numbers of United States fishermen will engage in them.

A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and, while affording to the United States fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait also which is required for the supply of the United States demand for the bank fishery must have the effect of diminishing the supply of cod for the inshores, as it is well known that the presence of that fish is caused by the attraction offered by a large quantity of bait fishes, and as this quantity diminishes the cod will resort in fewer number to the coast. The effect of this diminution may not in all probability be apparent for some years to come, and whilst United States fishermen will have the liberty of enjoying the fisheries for several years in their present teeming and remunerative state, the effects of overfishing may, after their right to participate in them has lapsed, become seriously prejudicial to the interests of the local fishermen.

II.—*The privilege of procuring bait and supplies, refitting, drying, transshipping, &c.*

Apart from the immense value to United States fishermen of participation in the Newfoundland inshore fisheries, must be estimated the important privilege of procuring bait for the prosecution of the bank and deep-sea fisheries, which are capable of unlimited expansion. With Newfoundland as a basis of operations, the right of procuring bait, refitting their vessels, drying and curing fish, procuring ice in abundance for the preservation of bait, liberty of transshipping their cargoes, &c., an almost continuous prosecution of the bank fishery is secured to them. By means of these advantages United States fishermen have acquired, by the Treaty of Washington, all the requisite facilities for increasing their fishing operations to such an extent as to enable them to supply the demand for fish food in the United States markets, and largely to furnish the other fish-markets of the world, and thereby exercise a competition which must inevitably prejudice Newfoundland exporters. It must be remembered, in contrast with the foregoing, that United States fishing craft, before the conclusion of the Treaty of Washington, could only avail themselves of the coast of Newfoundland for obtaining a supply of wood and water, for shelter, and for necessary repairs in case of accident, *and for no other purpose whatever*; they therefore prosecuted the bank fishery under great disadvantages, notwithstanding which, owing to the failure of the United States local fisheries, and the consequent necessity of providing new fishing grounds, the bank fisheries have developed into a lucrative source of employment to the fishermen of the United States. That this position is appreciated by those actively engaged in the bank fisheries is attested by the statements of competent witnesses, whose evidence will be laid before the Commission.

It is impossible to offer more convincing testimony as to the value to United States fishermen of securing the right to use the coast of Newfoundland as a basis of operations for the bank fisheries than is contained in the declaration of one who has been for six years so occupied, sailing from the ports of Salem and Gloucester, in Massa-

chusetts, and who declares that it is of the greatest importance to United States fishermen to procure from Newfoundland the bait necessary for those fisheries, and that such benefits can hardly be overestimated; that there will be, during the season of 1876, upwards of 200 United States vessels in Fortune Bay for bait, and that there will be upwards of 300 vessels from the United States engaged in the Grand Bank fishery; that owing to the great advantage of being able to run into Newfoundland for bait of different kinds, they are enabled to make four trips during the season; that the capelin, which may be considered as a bait peculiar to Newfoundland, is the best which can be used for this fishery, and that a vessel would probably be enabled to make two trips during the capelin season, which extends over a period of about six weeks. The same experienced deponent is of opinion that the bank fisheries are capable of immense expansion and development, and that the privilege of getting bait on the coast of Newfoundland is indispensable for the accomplishment of this object.

As an instance of the demand for bait supplies derived from the Newfoundland inshore fisheries, it may be useful to state that the average amount of this article consumed by the French fishermen, who only prosecute the Bank fisheries during a period of about six months of the year, is from \$120,000 to \$160,000 annually. The herring, capelin, and squid amply meet these requirements and are supplied by the people of Fortune and Placentia Bays, the produce of the Islands of St. Pierre and Miquelon being insufficient to meet the demand.

It is evident from the above considerations that not only are the United States fishermen almost entirely dependent on the bait supply from Newfoundland, now open to them for the successful prosecution of the Bank fisheries, but also that they are enabled, through the privileges conceded to them by the Treaty of Washington, to largely increase the number of their trips, and thus considerably augment the profits of the enterprise. This substantial advantage is secured at the risk, as before mentioned, of hereafter depleting the bait supplies of the Newfoundland inshores, and it is but just that a substantial equivalent should be paid by those who profit thereby.

We are therefore warranted in submitting to the Commissioners that not only should the present actual advantages derived on this head by United States fishermen be taken into consideration, but also the probable effect of the concessions made in their favor. The inevitable consequence of these concessions will be to attract a larger amount of United States capital and enterprise following the profits already made in this direction, and the effect will be to inflict an injury on the local fishermen, both by the increased demand on their sources of supply and by competition with them in their trade with foreign markets.

III.—*The advantage of a free market for fish and fish-oil in Newfoundland.*

It might at first sight appear from the return of fish exports from the United States to Newfoundland that this privilege was of little or no value; indeed, the duties when collected on this article were of insignificant amount. There is, however, an important benefit conferred by it on United States fishermen engaged in the Bank fish-

eries. In fishing on the banks and deep sea, heretofore large quantities of small fish were thrown overboard as comparatively useless, when large fish, suitable for the United States market, could be obtained in abundance; this practice was highly prejudicial to the fishing grounds.

Under the Washington Treaty, two objects are attained: first, a market for the small fish at remunerative prices in Newfoundland; and secondly, the preservation of the fishing grounds.

It is evident that, although at the present time United States fishermen have been in enjoyment of the privileges conferred by the Treaty of Washington only for a short period, and may not have availed themselves to the full extent of this privilege, with actual profits derived thereby, and which, in certain instances, will be substantiated before the Commissioners by the evidence of competent witnesses, will be more fully appreciated during the remaining years of the existence of the right, and this item must form a part of the claim of Newfoundland against the United States.

CHAPTER III.—*Advantages derived by British subjects.*

Having now stated the advantages derived by United States fishermen under the operation of the Treaty of Washington, it remains to estimate the value of the privileges granted thereby in return to the people of Newfoundland.

In the first place, the value of the right of fishing on the United States coast conceded to them must be considered. This consists in the liberty of fishing operations, with certain exceptions already set forth, on that part of the United States coast north of the 39th parallel of north latitude.

The arguments on this head contained in section 1 of chapter 3, in the "case" of Canada, will, it is believed, have satisfied the Commissioners that no possible benefit can be derived by the fishermen of Newfoundland in this respect. Indeed, all that has been said with regard to Canada applies with even greater force to the more distant colony of Newfoundland. Evidence has, however, been collected, and will be laid before the Commissioners, if required, to prove that no fishermen from Newfoundland resort to United States waters for fishing operations.

Second, and finally, the remission of the duty by the United States on Newfoundland exports of fish and fish-oil must be taken into account, and this, no doubt, will be viewed as the most important item of set-off to the privileges conferred on United States citizens.

This privilege is, however, reciprocal, and enables the people of the United States to dispose of their fish in Newfoundland markets. When the comparatively small export of Newfoundland fish and fish-oil to the United States is taken into consideration, the amount of duty remitted thereon is so insignificant that it could not, under any circumstances, be entertained as an offset for a participation in the privileges accorded under Article XVIII of the Treaty of Washington.

The tables annexed (Appendix D) will show not only the small amount of exports of this article from Newfoundland to the United States, but also the large and increasing trade with other countries. Even if a prohibitory duty were imposed in the United States on

exports of fish from Newfoundland, it would be a matter of small moment to that colony, which would readily find a profitable market for the small quantities of fish which would otherwise be exported in that direction.

Again, upon an article so largely consumed as fish is in the United States, a remission of duty must be admitted to be a benefit to the community remitting the duty, as in reality it relieves the consumer, while it affords no additional remuneration to the shipper; and this, as a matter of fact, has been particularly the case as regards Newfoundland fish shipments to the United States.

The opening up of the fishing-grounds in Newfoundland, and their bait-supply to United States enterprise, enables the people of that country to meet the demand for fish-food in their markets; already an appreciable falling off has taken place in the exports to that country of Newfoundland-caught fish (which has always been very limited), and which, it may not unreasonably be supposed, will soon cease, owing to the extension of United States fishing enterprise.

CONCLUSION.

It has thus been shown that under the Treaty of Washington there has been conceded to the United States—

First. The privilege of an equal participation in a fishery vast in area, teeming with fish, continually increasing in productiveness, and now yielding to operatives, very limited in number when considered with reference to the field of labor, the large annual return of upwards of \$6,000,000, of which 20 per cent. may be estimated as net profit, or \$1,200,000.

It is believed that the claim on the part of Newfoundland in respect of this portion of the privileges acquired by United States citizens under the Treaty of Washington will be confined to the most moderate dimensions when estimated at one-tenth of this amount, namely, \$120,000 per annum, or, for the twelve years of the operation of the treaty, a total sum of \$1,440,000.

Secondly. There has also been conceded to the United States the enormous privilege of the use of the Newfoundland coast as a basis for the prosecution of those valuable fisheries in the deep sea on the banks of that island capable of unlimited development, and which development must necessarily take place to supply the demand of extended and extending markets. That the United States are alive to the importance of this fact, and appreciate the great value of this privilege, is evidenced by the number of valuable fishing-vessels already engaged in this branch of the fisheries.

We are warranted in assuming the number at present so engaged as at least 300 sail, and that each vessel will annually take, at a moderate estimate, fish to the value of \$10,000. The gross annual catch made by United States fishermen in this branch of their operations cannot, therefore, be valued at less than \$3,000,000, and of this at least 20 per cent., or \$600,000 per annum, may fairly be reckoned as net profit; of this profit Newfoundland is justified in claiming one-fifth as due to her for the great advantages derived by the United States fishermen under the Treaty of Washington of securing Newfoundland as a basis of operations and a source of bait-supply indispensable to the successful prosecution of the Bank fisheries. An

annual sum of \$120,000 is thus arrived at, which, for the twelve years of the operation of the treaty would amount to \$1,440,000, which is the sum claimed by Her Majesty's Government on behalf of Newfoundland in this respect.

In conclusion, for the concession of the privileges shown above, Her Majesty's Government claim, in respect of the colony of Newfoundland, over and above any alleged advantages conferred on British subjects under the fishery articles of the Treaty of Washington, a gross sum of \$2,880,000, to be paid in accordance with the terms of the treaty.

SUMMARY.

In Part I of this case, the claim of Her Majesty's Government in respect of the Dominion of Canada has been stated at a sum of \$12,000,000; their claim in respect of the colony of Newfoundland has been stated in Part II at a sum of \$2,880,000—or a gross total of \$14,880,000—which is the amount which they submit should be paid to them by the Government of the United States, under the provisions of Article XXII of the Treaty of Washington of the 8th May, 1871.

Extracts from testimony.

No. 13.]

FRIDAY, August 10, 1877.

The Conference met.

JOHN JAMES FOX, collector of customs, registrar of shipping, and overseer of fisheries, at Amherst Harbor, Magdalen Islands, called on behalf of the Government of Her Britannic Majesty, sworn and examined.

By Mr. THOMSON:

Question. How long have you been living at Amherst?—Answer. For 26 years; I have been a customs officer for 25 years.

Q. Have you held the offices of which you are at present in charge all that time?—A. Yes.

Q. It is your business to keep a record of the shipping that enters your port?—A. Yes.

Q. Have you got such a record from 1854 up to the present time with you now?—A. I have a statement of the herring caught in Amherst Harbor.

Q. Have you any statement of the number of vessels that enter the harbor?—A. No. They vary so much.

Q. Have you not got with you the entries for each year?—A. No.

Q. Do all the American vessels, when they come into the harbor, enter?—A. They report, like our own coasting vessels.

Q. Can you tell me, either from your recollection or from the official records, how many American vessels entered Amherst Harbor during 1854?—A. There were over 100.

Q. All fishing vessels?—A. Yes.

Q. What is the practice of these vessels when they come into the harbor and frequent the Magdalen Islands?—A. They fish with seines near the shore.

Q. How far from the shore?—A. On the shore; all the fish are near the shore.

Q. Have they landed during and since 1854?—A. They have always pursued the same manner of fishing.

Q. And landed?—A. Yes.

Q. Could they take the fish in seines near the shore without landing?—A. Not about our way.

Q. As a matter of fact, do they ever seine except from the shore?—A. They fish with purse seines outside.

Q. But as a matter of fact, do they seine within the three mile limit except from the shore?—A. No.

Q. They seine from the shore altogether?—A. Yes.

Q. Before the ratification of the Treaty of Washington, whenever they took fish inshore, what did they do with them?—A. The seines were hauled near the shore; the boats were loaded from the seine, and the fish were taken on board the vessel, where they were salted.

Q. They did not take the fish from the shore themselves?—A. The seine is hauled to the shore.

Q. And the boats are brought alongside and the fish are dipped out of it?—A. Yes, they are then put on board, salted on deck, and put down in bulk.

Q. You are now speaking of herring?—A. Yes. A few vessels came to Pleasant Bay for mackerel in 1852 and 1854, and fished with nets; but this practice was then discontinued until within the last few years.

Q. Has there not been mackerel fishing within three miles of the shore around the islands from 1854 up to the present time?—A. O, yes, they come quite inshore occasionally; and when this is the case, the vessels come and generally anchor with our boats.

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No. 14.]

MONDAY, August 13, 1877.

The conference met.

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No. 15.]

THOMAS R. BENNETT, 47 years of age, judge of the district court at Harbor Grace, Newfoundland, was called on behalf of the Government of Her Britannic Majesty, sworn and examined.

By Mr. WHITEWAY:

Question. How long have you resided in Newfoundland?—Answer. Since 1854.

Q. Have you a thorough knowledge of the fisheries of that island?—A. I have an intimate knowledge of them.

Q. How did you obtain it?—A. For many years I was engaged in mercantile business in connection with these fisheries.

Q. Both on the Southern coast and the Eastern coast?—A. Not on the Eastern. The coast in the District of Fortune Bay is usually spoken of in Newfoundland as the Western coast. I merely mention it in order that I may be understood if I make use of the expression afterwards.

Q. As a matter of fact, however, it is the Southern coast?—A. Yes.

By Mr. DANA:

Q. Where is Harbor Grace?—A. On the Eastern coast, in Conception Bay; it is situated on one side of this bay.

By Mr. WHITEWAY:

Q. You are a native of Nova Scotia?—A. Yes.

Q. How long did you reside at Fortune Bay?—A. About nineteen years.

Q. This is in close proximity to the islands of St. Pierre and Miquelon?—A. Yes; the islands of St. Pierre, Langley, and Miquelon lie across from the entrance to the bay.

Q. Besides a thorough knowledge of the Newfoundland fisheries, you have also an intimate acquaintance with the manner in which the fisheries are carried on by the French?—A. I have. I have been at St. Pierre Island probably one hundred times.

Q. What fisheries exist on the coast of Newfoundland?—A. The cod, salmon, herring, halibut, turbot, and seal fisheries.

Q. Are not caplin and squid caught there?—A. Yes; and there are a number of other species of fish which are sometimes taken for bait.

Q. Herring, caplin, and squid are the fish which are usually used for bait?—A. Yes; some fishermen use shell-fish, but this is very rarely done.

Q. Will you point on the map the Ramea Islands?—A. They are here, on the Western coast.

Q. Will you trace the map around Cape Ray to Quirpon and Cape John?—A. Here is Quirpon, and here White Bay, and there is Cape John.

Q. Between Quirpon and Cape John lies the part of the coast along which, I believe, the French and English enjoy concurrent right to fish, and where, under the Washington Treaty, the Americans have a right to fish?—A. Yes.

Q. And the Washington Treaty gave to the Americans the privilege of fishing from Rameaux eastwardly to Cape Race, and thence north to Quirpon?—A. Yes.

Q. So that, on this portion of the coast, from Cape Ray by Quirpon to Cape John, the Americans, English, and French have now concurrent right to fish, and the Americans and English on the remainder of the coast?—A. Yes. On the East coast are situated Notre Dame Bay, Bonavista Bay, Trinity Bay, and Conception Bay; and on the Western coast Saint Mary's and Placentia and Fortune Bay. The others are smaller inlets.

Q. Up to Ramea Islands?—A. Yes.

Q. By the Washington Treaty the Americans have concurrent right with the English to fish on that portion of the coast?—A. Yes; and on the whole of the coast.

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TUESDAY, August 14.

The conference met.

The examination of Judge BENNETT was continued.

By Mr. WHITEWAY:

* * * * *

Q. Now, with regard to the western coast of the island over which the Americans prior to the Washington Treaty enjoyed the privilege

of fishing, that is from Ramea Islands to Cape Ray and from thence to Quirpon, is that suitable as a basis for carrying on the bank or deep-sea fishing?—A. Only to a limited extent. The bait would not be found at all seasons of the year at that part of the coast. Only in a few localities or indentations is there sufficient depth to hold the herring or other bait. It could not be relied on as a basis for operations to any great extent.

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WEDNESDAY, *August 15, 1877.*

The conference met.

The examination of Mr. KILLIGREW was resumed.

* * * * *

By Mr. DANA:

Q. I forget whether you told us you were a native?—A. I did not tell you. I am not a native.

Q. Where were you born?—A. In New Brunswick.

Q. You came to Newfoundland at what age?—A. I came there very young. I was about 14, I think.

Q. And you went into some place of business?—A. Yes, I went into the office of a merchant in Saint John's.

Q. What merchant?—A. John Stuart.

Q. Of what firm?—A. Of the firm of Rennie, Stuart & Co.

Q. Is that firm in existence?—A. No.

Q. For how many years did you remain a clerk there?—A. I do not remember how many years.

Q. Give us as nearly as you can recollect.—A. I think I was in the office 4 or 5 years.

Q. What business were you doing?—A. I was keeping the books.

Q. What business was the firm doing?—A. It was largely engaged in supplying for the fisheries.

Q. Did they own boats themselves?—A. Yes.

Q. And they employed men and supplied stores?—A. Yes, they supplied stores.

Q. Did they employ men themselves?—A. The men were shipped in their office to prosecute the fisheries. We had our regular shipping-papers drawn out.

Q. Did they have a shipping-office or merely ship the men they employed?—A. They had no shipping-office; it is all done in the merchants' office.

Q. He shipped them himself?—A. Well, he did so for his large dealers. The large dealers would represent him in selecting men, and he would bring them into the office and they would be shipped.

Q. They would be engaged to fish for the season?—A. Yes.

Q. Generally was it for the half year?—A. It was for the season, which differs in different places.

Q. How was he shipped?—A. A man was generally shipped to the master of the boat, not naming the boat, but naming the master.

Q. And he was bound by the contract to prosecute this business until October, though there might be a change in the master?—A. I do not know about that. It is a question of law.

Q. Do you remember how it read?—A. No.

Q. By whom was he paid?—A. The account was made up in the office and the balance struck by the accountant, and they would be paid by the firm of Rennie, Stuart & Co.

Q. And you also supplied them?—A. Yes.

Q. You supplied them with the outfit to prosecute the fisheries, and you also supplied them with the necessaries of life for their families, didn't you?—A. Well, that was optional. They did not always get what they required in that way, but there were very liberal advances made.

Q. You mean of the necessaries of life?—A. Sometimes, and sometimes the men would be young men and would not require it.

Q. Well, in this case, who owned the boats?—A. The planters owned the boats.

Q. That is, your dealers?—A. Yes.

Q. For instance, the firm of Rennie, Stuart & Co.?—A. No; they were the merchants.

Q. Well, the men that were hired did not own the boats?—A. No.

Q. They were the middlemen that owned the boats and that engaged the crew outside and brought them into the office of the merchants?—A. Yes.

* * * * *

Q. Then you sold to these fishermen their provisions, the necessaries of life for their families, while they were gone, didn't you?—A. To a limited extent that is true, but the planter generally took charge of that part.

Q. How do you mean?—A. He superintended it.

Q. That is, he bought it from the firm?—A. Sometimes he would have it himself. There would be sometimes traders doing business apart from the boats, and owning the boats.

Q. Suppose the planter does not keep a shop?—A. Then it is bought from the merchants; sometimes it is charged to the planter and sometimes to the men.

Q. It was all credit?—A. For the most part it was credit.

Q. It was all but universally credit, was it not?—A. No; not all but universally.

* * * * *

Q. To whose employ did you next go?—A. I went to the firm that succeeded Wm. Grieve & Co., carried on under the name of David Steele.

Q. How long were you with them?—A. I think eight years.

Q. Were they engaged in the same sort of business?—A. The same sort of business.

Q. With whom were you next?—A. That is all. I served no others except one house, where I stayed but a short time, waiting for an opening when I first came to the country. After leaving Steele I started for myself.

Q. How many years ago did you start for yourself? It is no matter about the exact date.—A. It is 25 years ago.

Q. Then you have been in this business of supplying the planters and fishermen in one capacity or another about 35 years?—A. Not quite as long as that. About 30 years.

Q. You have not fished yourself?—A. I have not, except for pleasure. Sometimes I have run out with them.

Q. But you have not been employed fishing?—A. No.

Q. Even in your youth?—A. No, not as a fisherman.

Q. You consider yourself, then, well acquainted with the mercantile side of this matter?—A. Yes, I do.

* * * * *

Q. And you think the fishermen are better off serving the merchants in that way than they would be if they undertook to fish for themselves?—A. Well, they get advances that enable them to begin, which they would be deprived of otherwise. I don't think they would be as well off without as they are with them.

* * * * *

Q. Now what is the rate between May and October of charge for credit? What is the difference between what a man would pay who offers cash, and what he would pay if obtaining his supplies on credit?—A. That requires some little figuring, for some goods are taxed more highly than others.

Q. Take an average?—A. I think 20 to 25 per cent. would be an average.

By Mr. WHITEWAY:

Q. What period do you refer to?—A. I am speaking now of credit given during the fishing season.

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EXTRACT FROM THE REPORT DATED APRIL 24, 1793, OF A COMMITTEE OF THE HOUSE OF COMMONS OF GREAT BRITAIN APPOINTED TO ENQUIRE INTO THE STATE OF THE TRADE TO NEWFOUNDLAND.

* * * * *

Your Committee again called *William Knox*, Esquire, who being examined, said, That in order to give the Committee the fullest information he was able upon the subject of their enquiry, he should begin by stating the objects of the Act of the 15th of His present Majesty, and the motives which induced the then Ministers (all of whom are now dead) to adopt the several provisions it contains, which he was the better enabled to do, as he was then one of the Under Secretaries of State in the American department, and furnished much of the information upon which they acted.

That the island of Newfoundland had been considered, in all former times, as a great English ship moored near the Banks during the fishing season, for the convenience of the English Fishermen. The Governor was considered as the ship's Captain, and all those who were concerned in the Fishery business, as his crew, and subject to naval discipline while there, and expected to return to England when the season was over. The English had then no rivals in the trade but the French; and although the French Fishery exceeded theirs, the English gradually increased, and those who carried it on were generally successful. The treaty of Paris, by adding Canada, all Nova Scotia and Cape Breton to the British American dominions, deprived France of the advantage she had from the employment of the inhabitants in the Fishery; but at the same time a new rival was raised up to the English Traders and Fishermen in those and the other northern British colonies, and as the profit the French inhabitants had made under the French Government by the Fishery on

their coasts, as well as on the coasts of Newfoundland, naturally turned the attention of the British subjects to the same business, many settlers emigrated to Newfoundland for the purpose, while others spread themselves along the shores of Nova Scotia and Cape Breton, so that there appeared evident danger of the trade and fishery being lost to England; and that instead of its being a British Fishery, as it had hitherto been, it would become a Colonial Fishery. To prevent the increase of inhabitants on the island, the most positive instructions were given to the Governors not to make any grants of the lands, and to reduce the number of those who were already settled there. Their vessels, as well as those belonging to the colonies, were to be denied any priority of right in occupying stations in the bays or harbors for curing their Fish over the vessels from England; and he was instructed to withhold from them whatever might serve to encourage them to remain on the island; and as Lord North expressed it, whatever they loved to have roasted, he was to give them raw; and whatever they wished to have raw, he was to give them roasted. With a view to secure the return of all the Fishermen carried out, half their wages was made payable to them in bills or cash at the end of the season, and their employers were obliged to find them a passage home, and allowed to retain forty shillings of their wages for that purpose; and to give an advantage to the Bank Fishery over the Shore Fishery, as well as to encourage the fitting out from England, without offence to the Colonies, a Bounty was given upon the taking 20,000 tail of Fish by bankers from England that carried out two green men, or youngsters that had never before been at sea. The effect of every one of these regulations has been the very contrary of what was intended; and the Witness's own experience as an Adventurer in the Fishery these five years past enabled him to correct his judgment as a politician, and to point out their pernicious tendency, as well as to suggest the remedy.

That soon after the Act of the 15th of His present Majesty was passed, he perceived, from comparing the governor's returns with the preceding ones, that the young lads left in the island were greatly increased, instead of being lessened, as was expected; and upon conversing with persons who had been there, and were concerned in the Fishery, he learned that half the wages a youngster was entitled to was not sufficient to pay the expense of fitting him out the first year; and besides, they often wanted to have something for mothers who they had assisted to support. The traders therefore hired them for two years, and left them the winter in the island, employing them in the Salmon Fishery, or in cutting timber, or other work as well to save the expence of their passage home as to avoid paying them half their wages, which would have left their employers out of pocket. This he experienced to be the case with the youngsters he took out and brought home; and upon this account, as well as upon another which he shall mention, he had given up fitting out for the Bounty, as he finds many others have done, and consequently fewer youngsters will be taken out, and fewer seamen made. The Bounty is most injudiciously appointed, as it ought to be (as the Greenland Bounty is) a kind of security against a bad voyage, whereas it is only paid upon a good one, for the banker which catches 20,000 tail of Fish, and lands them before the 15th of July, is sure of succeed-

ing well that season; but by limiting the time of catching to the 15th of July, a great mischief arises to those who endeavour to obtain it, and stay on the banks till that time, as the caplin bait always come into the harbors the first week in July, and the Cod will not take the salted bait of the former year after the fresh comes in. By my banker's waiting in hopes of the Bounty last year he lost at least £200. and one of them only caught Fish enough to obtain it before the 15th of July. The obligation imposed on the traders to find a passage home for their Fishermen, and the appropriation of forty shillings of their wages for that purpose, though intended, as he before observed, to secure the Fishermen's return to England, has been the occasion of many being left there; for it is to be considered, that the expence of carrying out Fishermen, as well as that of bringing them home, is so much addition to their wages, and therefore a Fisherman taken out and brought home stands his employer in four pounds more than he would have done if he had hired him at Newfoundland, and left him there. Besides, although the trader is obliged to find the Fisherman he carries out a passage home, the Fisherman is not obliged to take his passage in the ship he provides, but may ship himself in any other, and send the master to his employer for the forty shillings, so that the trader might be obliged to pay forty shillings a head for sending home his Fishermen at the same time his own ship went home in ballast, if he provided one. Are then the traders to be blamed for not providing ships to carry home their Fishermen, or for leaving as many of them in the country as are willing to stay? Or is it strange that many are willing to stay and cut wood all the winter for those who will supply them with provisions, without wages, under the promise of being employed the following season as Fishermen?

These mistaken regulations, together with the exaction of fees, and the detention of vessels for clearances at the Custom-house, and still more, the discovery that the Governor's commission did not authorize him to determine civil causes, though all discouragements to the Fishery, would not have occasioned its decline, if they had not been aided by more important causes, which have arisen or obtained a powerful operation to its disadvantage since the fatal treaty of 1783. By that treaty the North American colonies, now become independent states, are permitted to fish not only upon the banks of Newfoundland, but in all the bays, creeks, and rivers of that island, as of Nova Scotia and Cape Breton, as well as upon their own banks of St. George; and as they can build and fit out ships cheaper, pay less for their provisions, and less wages to their seamen and Fishermen than the British trader can or does, they can sell their Fish for a less price than he can afford to take, and they have accordingly almost beat out the British traders from all the markets on the coast of the Atlantic; and although the Barbary States are at war with them, they find means to procure Mediterranean passes through their friends in Nova Scotia, to protect them in carrying their Fish within the Streights, where it is preferred to the Newfoundland bank Fish. Another rival has also risen up to the British Fishery in the Danes or Norwegians, who have established a Fishery at Iceland, and cure their Fish taken in the winter by freezing instead of salting and drying it, and it is found to answer for present use, and comes much cheaper than the British Fish. These facts can be proved by letters

from my correspondents in Spain and Italy. While the supply is thus augmented, the consumption of Fish is considerably decreased in those countries, by the grant of indulgencies by the Pope to the Roman Catholics to eat other food than Fish in the time of Lent; and indeed, such is the general disregard of the church's mandates, that Fish is now commonly used only as a cheap or eligible food, and not as a religious abstinence; and as in consequence of the family compact, Spain greatly increased the Duties upon Baccolo, or dried Fish, it now comes so dear to the people, that its consumption as a cheap food is greatly decreased, and the manner of laying the Duty is particularly grievous to the British trader; for if upon finding a want of demand, or too low a price, at the port he first enters his cargo at, he should remove it to another, the Duty he first paid is not drawn back, and it is again exacted at the second port. The want of justice at the Spanish tribunals, and of protection from the British Government, is also to be numbered amongst the discouragements the British Fishery labors under; and he could produce to the Committee authentic documents to prove the facts, if it be thought proper to call for them; but he shall now proceed to the more agreeable talk of suggesting remedies for the evils he has pointed out, and such regulations and encouragements as he conceives will restore and increase the British Fishery: and the first he would recommend, is to recur to the old idea of the island of Newfoundland being considered as a great British ship, and to invest the Governor and his Surrogates by law with the authorities and powers he and they formerly exercised without law; but instead of their coming away, in times of peace, the 15th or 20th of October, before the Fishing business is ended, or the disputes between parties can be brought before them, or settled, they should be ordered to remain until the 1st of December; they would then be able to oblige the Fishermen brought out to return; and if they were not permitted to remain in the island, there would be no occasion to oblige their employers to find them a passage, as they would make their agreement accordingly before they went out; and their employer, being sure of their return with him, would provide for their conveyance; as however the preparation for the Fishery requires a certain number of persons to be left at every station during the winter, it would be proper to oblige none to return but such as had been left the former year, or had resided there two years, so that all who chose to stay might remain one or two winters in the island; this would encourage the carrying out of green men, or youngsters, as they might be left throughout the winter, and employed in such business as they were fit for, and acquire sufficient knowledge to be useful the next season. As the Shore Fish are now preferred to the Bank Fish in Italy and Spain, a Bounty should be given for the encouragement of the bye Boat Fishery, the bye boats being such as belong to the British ships, or are manned by Fishermen brought out by them, and are so called in contradistinction to the boats belonging to the inhabitants; that Bounty, however, should be given as head money to the Fishermen who have been so employed, upon their return to England. The Bounty to the bankers should be given upon certificate of the ship, manned and fitted as is now required, having been employed in the Bank Fishery from such a day in May to such a day in September; and having taken in all that time 10,000 Fish or upwards, that number being sufficient to ascertain her employment.

If no reduction of the Duties in Spain can be obtained, a drawback upon re-exportation of Fish appears too reasonable to be refused; and if advantage be taken of the present favourable circumstances, no doubt a preference, or some indulgence which would lead to it, might be obtained in favour of the British taken fish in Spain, and all the Italian states. These things being done, the Fishery might be left to itself; and the less Government attended to it, the better it would thrive.

Should it be judged necessary to remove any of the present inhabitants from the island, as many of them are Irish Catholics, he doubts not they would readily accept settlements in Canada, if Government would transport them there, and grant them lands, and furnish them with implements of husbandry to cultivate them, and provisions for their present subsistence. But if no grants of lands are made in the island, and no Civil Governor or other Civil Magistrate appointed, he does not apprehend there is any danger of its becoming a populous colony; and as there is abundance of good ship-building timber, particularly a large kind of birch, very convenient for water carriage, he does not see why they might not be as useful to Great Britain, by constructing vessels at Newfoundland, as the Orkneys, since they must bring every material, except the timber, as well as every necessary for themselves, from Great Britain to the one place as well as to the other, and they must continue in both equally subjects of this country, and equally amenable to its government.

EXTRACTS FROM "THE BRITISH DOMINIONS IN NORTH AMERICA,"
BY JOSEPH BOUCHETTE, PUB. LONDON, 1831.

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The foreign trade of this province (Nova Scotia) is, in common with that of the other British possessions in America, regulated by the statute 6 Geo. IV., cap. 114, of the British Parliament, which took effect in 1826. Halifax and Pictou were declared free-warehousing ports, under this act, for the entry, warehousing, transporting, and exportation of all description of merchandize, with a few trifling exceptions. The exports of provincial produce consist of timber to Great Britain and foreign Europe; of gypsum, coal, and grindstones to the United States; of lumber, fish, beef, pork, butter, grain, potatoes, horses, horned cattle, and sheep to the West Indies, New Brunswick, Newfoundland, and Brazil. Besides provincial produce, considerable quantities of fish, flour and West India produce are re-exported. The imports consist of British manufactures of every kind, wines, dried fruit, &c. West India produce, salt, flour, and cured fish. The greatest part of this trade is carried on at Halifax, which is the general port of entry and clearance for the greater part of the province. The value of the exports, and quantity of shipping employed therein in 1828 was, of exported articles, 473,861£; shipping employed, 1,651; tonnage, 132,767; navigated by 7,304 men and boys. Among the articles exported were, 175,128 quintals of dry fish, and 40,526 barrels of pickled fish, the latter consisting principally of herrings, mackarel, salmon, alewives, and shad. The imports the same year were of the value of 847,530£ in 1,694 vessels, of 132,174 tons, navigated by 7,342 men and boys. Such a trade, carried

on by a province the resources of which are scarcely known, much less fully developed, and having only a scanty and widely-scattered population of 124,000 souls, is powerfully demonstrative of the industry and enterprise of the inhabitants, and of the value and importance of the colony. Fish is the chief staple of the trade of this province. The fishery is carried on principally on the eastern shore, in and about Chedabucto Bay; on the southern at Lunenburg, Liverpool, and Shelburne; on the western at Yarmouth, Clare, Argyle, and Barrington; and at Annapolis, in the Bay of Fundy. The fish principally taken are cod, herrings, mackarel, shad, alewives, and salmon. The fisheries of Chedabucto Bay are remarkably productive; indeed cod is taken in the bay, and even in the harbours, and so are herrings; and the shoals of mackarel are immense. This fish is to be found from June to October on the shore and in the harbours, in such quantities that 1000 barrels have been taken in a sieve at one draught. At the commencement of the season the fisherman obtains permission from the proprietor of the beach to erect his hut, and occupy a certain space for his boat and nets, for which he pays at the end of the season a barrel or more of cured mackarel, and one-twentieth of the aggregate quantity of fresh fish besides. The fishery is usually held by shares; the owner of the boat and nets taking one half of the produce, and the fishermen he employs, the other, which is divided amongst themselves. One proprietor has been known to receive nearly 2000 barrels of mackarel in the year for his fishing grounds, each barrel worth 17s. 6d. The quantity of herrings that throngs Annapolis Basin is almost incredible; they are caught in weirs. Herring fishing commences in May and continues generally to September, sometimes until November; at one time the fish remained so long that they were frozen in immense masses in the weirs. After being properly selected and cleaned, they are smoked, and packed in boxes of half-bushel size, 200 fish in each box, and are shipped for the West India market. The herring fishery on the other parts of the coast is carried on in the usual way. Besides this "shore" fishery, the Nova Scotians carry on a considerable cod fishery on the Labrador shore. The fish is taken there, and generally brought to the ports of this province to be cured.

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As all the importance attached to this colony (Newfoundland) has arisen exclusively from its fisheries, little has been done on shore to claim our attention. The different settlements amount to about sixty or seventy in number, and are scattered on the shores of the eastern and southern sides of the island, but principally the former; there are indeed some inhabitants on the western shore, near its southern extremity, but they do not extend northward of St. George's Bay, though the vicinity of that bay has proved extremely fertile.

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Since several merchants, deeply engaged in the trade, have settled here (St. John's, Newfoundland), and many industrious inhabitants have by their consistent efforts raised themselves to comparative wealth, and since the administration of justice has been placed on a more permanent and certain footing than formerly, the state of society has continued rapidly advancing in respectability and civilization, and is now better than could be expected from a fishing station, the internal improvement of which has been so uniformly discouraged.

The settlements continue almost continuously along the southern shore, as far as Fortune Bay, and at most of the harbours there are places of worship. The settlement at St. George's Bay is perhaps more agricultural than any other on the island.

EXTRACTS FROM "BRITISH AMERICA," BY M'GREGOR, PUB. 1832.

NEWFOUNDLAND.

* * * * *

CHAPTER II.—*Sketch of its History.*

Newfoundland, although occupying no distinguished place in the history of the New World, has, notwithstanding, at least for two centuries and a half after its discovery by Cabot in 1479, been of more mighty importance to Great Britain than any other colony; and it is doubtful if the British empire could have risen to its great and superior rank among the nations of the earth, if any other power had held the possession of Newfoundland, its fishery having ever since its commencement furnished our navy with a great proportion of its hardy and brave sailors.

France made a claim to Newfoundland, under pretence of priority of discovery; alleging that the fishermen of Biscay frequented the banks even before the first voyage of Columbus, and that Verazani afterwards discovered it sooner than England. These pretensions, however, could not constitute a right in France, as Cabot, by the most undoubted authority, discovered and landed on the coast several years before, and took possession of this island, which he named Baccalaos,^a and on the island of St. John's (now Prince Edward Island): from the latter he carried away three natives to England. He also discovered the continent of Norembegua, the ancient name of all that part of America situated between the Gulf of St. Lawrence and Virginia.^b

The first attempt made by the English to form a settlement in Newfoundland, was in the latter part of the reign of Henry VIII., at the recommendation of Messrs Elliot and Thom, who traded there with leave from the crown; and to such advantage, that an expedition was made, at the expense of a Mr. Hare, a merchant of eminence, and his friends, for the purpose of planting Newfoundland.

From their ignorance of the nature of the country they failed in their attempt, and were reduced to great wretchedness through famine and fatigue. From this period until 1579, all thoughts of prosecuting the discovery and settlement of Newfoundland were relinquished, although we had then fifteen ships engaged in its fisheries. About this time, Captain Whitburn, who was employed by a merchant of Southampton, in a ship of three hundred tons, put into Trinity Bay, where he was so successful, that, with a full cargo of fish, &c., he cleared the expenses of the voyage. He says, "we saw in 1610 a mermaid in St. John's harbour," and in 1612, "we saw Easton the arch-pirate, with ten sail of good vessels, well furnished and very rich;" "many pirates frequented the coast at this time."

^a The name by which the natives called cod-fish, which were so abundant as to induce Cabot to give this name to the country.

^b Vide Hackluyt's Voyages. De Thou. Herrera. Hist. Gen. Amer. Raynal.

He afterwards repeated the voyage, formed an acquaintance with the natives, and during his residence, Sir Humphrey Gilbert arrived in Newfoundland with three ships (some say five) and 250 men, with a commission from Queen Elizabeth to take possession of the island for the crown. On the 5th August, 1583, he took formal possession in the name of his sovereign, and received the acknowledged obedience of the crews of thirty-six vessels of different nations, then in the harbour of St. John's.

He then promulgated some laws for the government of the colony and levied contributions of provisions on the ships there. He left Newfoundland on the 20th August with three ships, one of which was lost on the Isle of Sables; and on returning homeward, the ship which he commanded foundered during a storm, and all on board perished. He is described as a gentleman of the most amiable character, engaging manners, courage, wisdom, and learning, and also much esteemed by Queen Elizabeth. He may justly be considered the parent of English colonies. After this we find no mention of Newfoundland until 1585, when a voyage was made there by Sir Bernard Drake, who claimed its sovereignty and fishery in the name of Queen Elizabeth, and seized upon several Portuguese ships laden with fish, oil, and furs.

The most active spirit of discovery and commercial enterprise was at this period beginning to rouse the people of England; but the war with Spain, and the terror of the Grand Armada, checked, although it did not subdue, the ardour of the most sanguine of those who were bent on planting newly-discovered countries; and fifteen years passed away before another voyage was made to Newfoundland. The spirit of trade and discovery was again revived in England by Mr. Guy, an intelligent merchant of Bristol, who wrote several judicious treatises on colonization and commerce; and, from the arguments of this gentleman, several persons of distinction applied to James I. for that part of Newfoundland lying between the Capes of St. Mary and Bonavista, which they obtained in 1610, under the designation of "The Treasurer and Company of Adventurers and Planters of the Cities of London and Bristol, for the Colony of Newfoundland." This patent was granted to the Earl of Northampton, the Lord Chief Baron Tانfield, Sir John Doddridge, Lord Chancellor Bacon, Lord Verulam, &c., and was in substance, "That whereas divers of his Majesty's subjects were desirous to plant in the southern and eastern parts of Newfoundland, where the subjects of this realm have, for upwards of fifty years past, been used annually, in no small numbers, to resort to fish, intending thereby to secure the trade of fishing to our subjects for ever; as also to make some advantage of the lands thereof, which hitherto have remained unprofitable; wherefore, his Majesty now grants to Henry, Earl of Northampton, (and forty-four persons herein named,) their heirs and assigns, to be a corporation with perpetual succession, &c., by the name of the Treasurer and Company of Adventurers and Planters of the Cities of London and Bristol, for the Colony and Plantation in Newfoundland, from north latitude 46° to 52°; together with the seas and islands lying within ten leagues of the coast; and all mines, &c., saving to all his Majesty's subjects the liberty of fishing there," &c.

My Guy went to Newfoundland as conductor of the first colony, which he settled in Conception Bay, and remained there two years;

during which time he contracted, by his courteous and humane conduct, a friendship with the natives. He left behind him some of his people, to form the foundation of a colony; but, as the fishery was the main object of the English, the planting of Newfoundland was not attended to.^a

In 1614, Captain Whitburn, who had made several fishing voyages, carried with him this year a commission from the Admiralty to empannel juries, and investigate upon oath divers abuses and disorders committed amongst the fishermen on the coast. By this commission he held, immediately on his arrival, a court of admiralty, where complaints were received from an hundred and seventy masters of vessels, of injuries committed, variously affecting their trade and navigation.

In 1616, Doctor William Vaughan, who purchased from the patentees a part of the country included in the patent, settled a small colony of his countrymen, from Wales, in the southernmost part of the island, (which he named Cambriol,) now called Little Britain. He appointed Whitburn governor; and his scheme was for the fishery of Newfoundland to go hand in hand with his plantation.^b

In 1621, Sir George Calvert, afterward Lord Baltimore, obtained a grant from King James, of that part of Newfoundland situated between the Bay of Bulls and Cape St. Mary's, in order that he might enjoy that free exercise of his religion (being a Catholic) which was denied him in his own country. The same spirit drove at this time crowds of Puritans to New England. How it was managed to grant this property to Sir George Calvert, without invading the right of the company, of which it certainly formed a part, is not accounted for.

Sir George sent Captain Edward Wynne, who held the commission of governor, before him, with a small colony, and in the meanwhile embarked his fortune and talents, and engaged all the interest of his friends, in securing the success of his plan. Ferryland, the place where Wynne settled, was judiciously chosen. He built the largest house ever erected on the island, with granaries, storehouses, &c., and was, in the following year, reinforced by a number of settlers, with necessary implements, stores, &c. He erected a saltwork also, which was brought to considerable perfection; and the colony was soon after described, and with truth too, to be in a very flourishing condition; and so delighted was the proprietor, now created Lord Baltimore, with the prosperity of the colony, that he emigrated there with his family, built a handsome and commodious house and a strong fort at Ferryland, and resided many years on the island.

About the same time, Lord Falkland, then Lord Lieutenant, sent a colony from Ireland to Newfoundland; but Lord Baltimore's departure soon after for England, to obtain a grant for that part of the country called Maryland, prevented the growing prosperity of his colony, which he called Avalon,^c but which, however, he still retained, and governed by his deputies.

^a Vessels of not more than 35 tons made voyages to Newfoundland about this time.

^b Anderson on Commerce, vol. 1, p. 495.

^c This was the ancient name of a place in Somersetshire on which Glastonbury now stands, and is said to be the spot where Christianity was first preached in Britain. Lord Baltimore, with the idea that his province was the place in America where Christianity was first introduced, named it Avalon.

In the course of about twenty years after Lord Baltimore planted Ferryland, about three hundred and fifty families were settled in fifteen or sixteen parts of the island; and a more decided interest in its affairs was taken than at any former period. This led, on the part of the inhabitants, to apply for some civil magistrates, to decide matters of dispute or disorder among them; but the measure was strenuously opposed by the merchants and shipowners in England concerned in the trade, who petitioned the Privy Council against the appointment of any governor to manage the affairs of Newfoundland, and the prayer of this petition was absurdly enough granted.

In 1674, however, farther application, by petition to the king, was made for a governor; and the petition being referred to the Lords of Trade and Plantations, their lordships proposed that all plantations in Newfoundland should be discouraged, and that the commander of the convoys should compel the inhabitants to depart from the island, by putting in execution one of the conditions of the western charter. His Majesty was induced to approve of this report; and under its sanction, the most cruel and wanton acts were committed on the inhabitants; their houses were burnt, and a variety of severe and arbitrary measures resorted to for the purpose of driving them from the country.

The extent to which the cruelties committed on the inhabitants had been carried, induced Sir John Berry, the commander of the convoy, about this time to represent to government the policy of colonizing Newfoundland. His advice, however, was not attended to.

In 1676, on the representation of John Downing, a resident inhabitant, his Majesty directed that none of the settlers should be disturbed. But in the following year, in pursuance of an order in council that had been made on the petition of the western adventurers, the Committee of Trade, &c., reported, that notwithstanding a clause in the western charter, prohibiting the transport to Newfoundland of any persons but such as were of the ship's company, the magistrates of the western ports did permit passengers and private boat-keepers to transport themselves thither, to the injury of the fishery; and they were of opinion that the abuse might hereafter be prevented by those magistrates, the vice admirals, and also by the officers of customs.

A petition, on the part of the inhabitants of Newfoundland, soon followed this representation; and in order to investigate the matter fully, it was ordered that the adventurers and planters should each be heard by their counsel. The question was thus seriously argued, and afterwards referred, as formerly, to the Committee of Trade; but no report seems to have been made on this occasion, and no steps for regulating the settlement or fishery of Newfoundland were adopted, until the Board of Trade, instituted in January 1697, took up the subject, among others that came under their province. They made a report, which, however, applied more to the defence of the island, than to its civil regulations, and went no farther than to express an opinion, that a moderate number of planters, not exceeding one thousand, were useful in the construction of boats, stages, and other necessities for the fisheries. The English, in 1692, made a feeble attempt to take Placentia, then commanded by the Baron La Hontan from France. This was unsuccessful, in consequence of the

irresolution of the commander of our squadron; and in 1696, England had the mortification to know that France took from us all our settlements in Newfoundland, except Bonavista and Carbonier.

The English, however, soon repossessed themselves of St. John's and all the other places taken by France. But, at this period, that nation began to evince a spirit of determination to become mistress of all America; and the fisheries of Newfoundland, as appears fully by the celebrated marine ordinance of Louis XIV., drawn up under the great Colbert, were not the least objects of her ambition.

In 1690, the statute 10 and 11 William and Mary, cap. 25, entitled, "An Act to encourage the trade of Newfoundland," passed; but as the substance of this act appears to embody the policy of former times, it tended to no purpose other than to legalize misrule, and the capricious will of ignorant men, invested accidentally by it with authority.

These persons were distinguished by the dignified titles, or rather nicknames, of admirals, vice-admirals, and rear-admirals. The master of the first fishing vessel that arrived, was the admiral; the next, vice-admiral; and the third, rear-admiral, in the harbours they frequented. Few of these men could write their own names; and from this circumstance alone the absurdity of investing them with power must be apparent.

The report made in 1701 by Mr. George Larkin, who went to the American settlements to make observations for the information of government, contains many remarks that deserve attention. He found Newfoundland in a very disorderly and confused condition. The woods were wantonly destroyed by rinding the trees. The New England men (as is their custom now, in 1828, in many of our harbours) sold their commodities cheap, in general; but constrained the purchasers to take certain quantities of rum, which the inhabitants sold to the fishermen, and which tempted them to remain on the island, and leave their families in England, a burden upon the parish. The inhabitants also sold rum to their servants, who got into debt, and were forced to hire themselves in payment, so that one month's profuse living often left them in bondage for a year.^a

The fishermen from New England were accustomed to inveigle away many of the seamen and servants, with promises of high wages; but these men were generally disappointed, and in the end became pirates. The inhabitants he represents as a profuse sort of people, who cared not at what rate they got into debt; and that, as the act of King William gave the planters a title, it was much to be regretted that proper regulations were not made for their government, more particularly as the island, from its having no civil power, was then become a sanctuary for people who failed in England.

Upon complaints being made to the commander on the station, it had been customary for him to send his lieutenants to the different harbours to decide disputes between masters of fishing vessels and the planters, and between them again and their servants; but upon such occasions, Mr. Larkins alleges those matters were conducted in the most corrupt manner. He that made a present of most quintals of fish, was certain to have a judgment in his favour. Even the com-

^a This has been common in all the British American colonies and prevails to this day.

manders themselves were said to be, in this respect, faulty. After the fishing season was over, masters beat their servants, and servants their masters.

The war with France in 1702—as the French, at that period, were masters of Canada, Cape Breton, &c., and were also established, in Newfoundland, at Placentia—disturbed the fisheries and other affairs of Newfoundland; and in 1708, the French took St. John's, and some places in Conception Bay, which they held until the peace of Utrecht.

In 1708 the House of Commons addressed Queen Anne on the subject of the better execution of laws in Newfoundland, when it was, as usual, referred to the Board of Trade, which only went so far as to get the opinion of the Attorney-General on the statute of King William.

Two years after, fifteen very useful regulations were agreed upon at St. John's, for the better discipline and good order of the people, and for correcting irregularities contrary to good laws and acts of Parliament. These regulations, or by-laws, were debated and resolved on at courts, or meetings, held at St. John's; where were present, and had all a voice, a mixed assemblage of merchants, masters of merchant-ships, and planters. This anomalous assembly formed, at the time, a kind of public body, exercising executive, judicial, and legislative power.

By the treaty of Utrecht, in 1713, Placentia, and all other parts of Newfoundland occupied by the French, were, in full sovereignty, ceded to Great Britain; the French, however, retaining a license to come and go during the fishing season.

The Guipuscoans were also, in an ambiguous manner, acknowledged to have a claim, as a matter of right, to a participation in the fishery; which the Board of Trade declared afterwards, in 1718, to be inadmissible.

Government about this time, as well as the merchants, began to direct their attention to the trade of the island, with more spirit than they had hitherto shown. A Captain Taverner was commissioned to survey its coasts; a lieutenant-governor was appointed to command the fort at Placentia, and a ship of war kept cruising round the island, to keep the French at their limits.

In 1729, it was concluded, principally through the representation of Lord Vere Beauclerk, the commander on the station, to establish some permanent government, which ended, as Mr. Reeves observes, in the appointment, "not of a person skilled in the law," as had been proposed, but of a Captain Henry Osborne, commander of his majesty's ship the Squirrel. Lord Vere Beauclerk, who set sail for Newfoundland with the governor, in the summer of this year, received a box, containing eleven sets of Shaw's Practical Justice of the Peace, being one for each of the following places, which were respectively impressed on the covers in gold letters: "Placentia, St. John's, Carbonier, Bay of Bulls, Ferryland, Trepasse, Bay de Verd, Trinity Bay, Bonavista, and Old Parlekin, in Newfoundland;" together with thirteen copies of the statute of King William, and the act relating to the navigation and trade of the kingdoms.

The commission delivered to Captain Osborne revoked so much of the commission to the governor of Nova Scotia as related to Newfoundland. It then goes on to appoint Captain Osborne governor of the island of Newfoundland, and gives him authority to administer

oaths to justices of the peace, and other officers whom he may appoint under him, for the better administration of justice, and keeping the peace of the island. He was empowered also to erect a court-house and prison; and all officers, civil and military, were directed to aid and assist him in executing his commission. He appointed the first sheriff of the island.

The petty jealousies and interests of the fishing admirals, merchants, and planters, prevented Osborne and his successors, for a period of twenty years, from carrying into execution the objects and regulations contained in their commissions and instructions. Indeed, the most disgraceful opposition to the civil government was made, particularly by the fishing admirals. Complaints were frequently produced on both sides, and it is probable, as is usual in such cases, that each of the contending parties was in fault. The aggressors, however, were assuredly those who opposed the civil authority, and whose conduct clearly showed that their object was to deprive the resident inhabitants of all protection from government. This contest continued, until it was found that his majesty's ministers were resolved not to withdraw the civil government from the island.

In the commission of the peace for the island, the justices were restrained from proceeding in cases of doubt or difficulty—such as robberies, murders, felonies, and all capital offences. From this restriction, a subject of considerable difficulty and inconvenience arose, as persons who had committed capital felonies could only be tried in England; and, in 1751, a commission was issued to Captain William Francis Drake, empowering him to appoint commissioners of oyer and terminer for the trial of felons at Newfoundland.

In 1742, in consequence of the number of captured vessels brought into St. John's, a court of Vice-Admiralty was established.

A claim was made, in 1754, by Lord Baltimore, to that part of the island originally granted to his ancestors, and named by him "the province of Avalon." This claim was declared inadmissible by the Board of Trade, agreeable to the opinion of the law officers; and it has since then been relinquished.

In June, 1762, the French took St. John's, Trinity and Carbonier, and retained them until September following, when they were retaken, with some difficulty, by the forces sent from Halifax, under Lord Colville and Sir Jeffrey Amherst.

The peace of 1763, by which we acquired all the French possessions in North America, opened a most favourable opportunity for extending the fishery, to the decided advantage of these kingdoms; and the Board of Trade, in bringing the subject under their consideration, applied for information to the towns in the west of England, as well as to Glasgow, Belfast, Cork, and Waterford, which had for some time been engaged in the trade. In the year following, a collector and comptroller of the customs were established at St. John's. This measure, and the consequent introduction of the navigation laws, were complained of by the merchants, in the same way as the appointing commissioners of the peace, and of oyer and terminer.

The French, always, but now more than ever, anxious about their fishery, insisted on their having a right to the western coast, for the purpose of fishing as far south as Cape Ray; maintaining that it properly was "Point Riche", mentioned in the treaty of Utrecht. This claim embraced nearly two hundred miles of the west coast of

Newfoundland more than they had a right to by treaty; and their authority being founded only on an old map of Hermann Moll, was shown, with great accuracy, by the Board of Trade, to be altogether inadmissible. The coast of Labrador was in 1763 separated from Canada, and annexed to the government of Newfoundland. This was a very judicious measure; but, as the chief object of those who at that time frequented Labrador, was the seal-fishery, the Board of Trade, at the recommendation principally of Sir Hugh Palliser, considered it unwise policy to separate Labrador from the jurisdiction of Canada; and accordingly recommended his majesty to re-annex it. This was effected in 1774,^a and in the following year an act^b was passed, the spirit of which was to defend and support the ship fishery carried on from England.

Its principal regulations were, that the privilege of drying fish on the shores should be limited to his majesty's subjects arriving at Newfoundland from Great Britain and Ireland, or any of the British dominions in Europe. This law set at rest all that had been agitated in favour of the resident colonists.

It must, at the same time, be acknowledged, that its provisions for upholding the ship fishery, for the purpose of making it a nursery for training seamen, were wise and judicious; and making the fish and oil liable for the payment of wages due to the people employed in and about the fisheries, was a very proper regulation. It extended, also, a bounty to the Newfoundland bank fishing; and British ships might by it occupy any part of the coasts of Labrador, as well Newfoundland, and they were not to be under any constraint as to days or hours of working.

L'Abbe Raynal observes, "that the English fishing admirals carried their insolence and superiority so far at this time, as to forbid the French fishermen to fish for cod on Sunday, upon the pretence that their own abstained from catching on that day."

The American revolutionary war, during its continuance, affected in a very injurious degree, the affairs of Newfoundland. A bill was passed in Parliament, prohibiting the people of New England from fishing at Newfoundland.^c This measure was loudly and strongly opposed by the merchants of London. The reasons alleged by ministers were, "that as the colonies had entered into an agreement not to trade with Britain, we were entitled to prevent them trading with any other country. Their charter restricted them to the Act of Navigation; the relaxations from it were favours to which, by their disobedience, they had no farther interest."

"The Newfoundland fisheries were the ancient property of Great Britain, and disposable, therefore, at her will and discretion; it was no more than just to deprive rebels of them." To this it was contended, that it was beneath the character of a civilized people to molest poor fishermen, or to deprive the wretched inhabitants of a sea-coast of their food; and that the fisheries being also the medium through which they settled their accounts with Britain, the cutting them off from this resource would only tend to put a stop to their remittances to England.

^a 14 Geo. III, cap. 83, commonly called the Quebec Act.

^b 15 Geo. III, cap. 31.

^c 15 Geo. III, cap. 10.

The fishermen also would, by this measure, be driven into the immediate service of rebellion. They would man privateers, and would accelerate the levies of troops the colonies were making; and, being hardy and robust men, would prove the best recruits that could be found.^a All this unfortunately happened.

From the evidence brought in support of their petition by the London merchants, it appears, that the four New England provinces employed, in the fisheries of Newfoundland and the banks alone, about 48,000 tons of shipping, and from 6000 to 7000 seamen; and that ten years before, since which time the fisheries had greatly increased, the produce of the fisheries in foreign markets amounted to L. 35,000. What rendered them particularly valuable was, that all the materials used in them (the salt for curing, and the timber for building the vessels, excepted) were purchased in Britain; and that the net proceeds were remitted in payment.

But the merchants of Poole, and other places engaged in the Newfoundland fishery, presented a second petition, in direct opposition to that of London. It represented, that the bill against the New England fishermen would not prove detrimental to the trade of Britain, which was fully able, with proper exertions, to supply the demands of foreign markets; that the British Newfoundland fishery bred a great number of hardy seamen, peculiarly fit for the service of the navy; whereas the New England seamen were, by act of Parliament, exempt from being pressed; that the fishing from Britain to Newfoundland employed about 400 ships, amounting to 360,000 tons, and 2000 shallows of 20,000 tons, navigated by 20,000 seamen; and that 60,000 quintals of fish were taken every season, the returns of which were annually worth, on a moderate computation, L. 500,000.

The New England colonies, in return, resorted to all means in their power to distress Britain in her American concerns; and for this purpose strictly prohibited the supplying of the British fishery on the banks of Newfoundland with any provisions whatsoever.

This was a proceeding wholly unexpected in England. The ships fitted out for that fishery, on arriving at Newfoundland, found their operations arrested for want of provisions; and not only the crews of the ships, but those who were settled in the harbours, were in imminent danger of perishing by famine. Instead of prosecuting the fishing business they came on, the ships were constrained to make the best of their way to England, and other places for provisions.

In addition to this obstruction to the fisheries, natural causes co-operated. During the fishing season, a storm, more terrible than was ever known in these latitudes, arose, attended with circumstances unusually dreadful and destructive. The sea, according to various accounts, rose from twenty to thirty feet above its ordinary level, and so suddenly, that no time was given to prepare against its effects. Some ships foundered with their whole crews; and more than seven hundred fishing crafts perished, with a great majority of the people in them. The sea broke in upon the lands where fish-houses, flakes, &c., were erected, and occasioned vast loss and destruction.

By the third article of the treaty of peace signed at Paris in 1783, it was agreed that the people of the United States should enjoy, unmolested, the right to take fish on the banks of Newfoundland, and in

^a Andrews's History of the American War, vol. 1, p. 339.

the Gulf of St. Lawrence, and also at all other places in the sea where they previously used to fish, and on the coast of Newfoundland; but not to cure their fish on that island. It was also agreed, that provisions might be imported to the British colonies in British bottoms. This was strongly opposed by the western merchants, but unsuccessfully; and, in 1788, upon the representation of the merchants connected with Canada, it was proposed to bring a bill into Parliament for preventing entirely the supply of bread, flour, and live stock, from the United States; but this intention was abandoned, and the mode of occasional supply continued.

The Board of Trade was abolished in 1782, and, for the last years of its existence, scarcely any thing appears on its records relative to Newfoundland. Matters of trade and plantations were for some years afterwards managed by a committee of council, appointed in 1784.

By this time the practice of hearing and determining civil causes became a subject of frequent complaint. Hitherto no court of civil jurisdiction had been provided for the colony; and, while the island remained merely a fishery, carried on by vessels from England, the causes of actions were not of great magnitude; but now that the population had increased to considerable numbers, and heavy mercantile dealings were frequent among them, discontent arose from time to time, that led to the establishment of a new court, by a commission to Admiral Milbanke, who was sent out as governor in 1789. But, as heavy complaints were preferred by the merchants, as well as the planters, against the proceedings of this court, an act was passed in 1792, empowering the governor, with the advice of the chief justice, to institute Surrogate Courts^a of civil jurisdiction in different parts of the island. The first chief justice was Mr Reeves, who published an interesting account of Newfoundland, with acts of Parliament relative to its government. He was a man of excellent character, and a sound lawyer. Newfoundland owed much to him; and it would have been well for that colony if his successors had followed the example of his conduct. Some of them were not only unskilled in the law, but weak or obstinate men, who were influenced by their interests or passions.

Admiral Gambier was appointed to the government in 1802. His administration was mild, and he appears to have been anxious to promote the interests of the colony, and to encourage the education of children born or brought up on the island.

Before the peace of Amiens, a regiment of volunteers was raised in the colony, and then disbanded. On the commencement of hostilities another regiment was raised, and afterwards attached to the regulars, under the name of "The Newfoundland Regiment of Light Infantry," under the command of Colonel Skinner.

The trade of the island was not in the least interrupted by the war, the vessels employed in the fisheries being fully protected by the ships of war on the station; and the admirals appointed from time to time to the command of the Newfoundland squadron, administered the government as formerly.

^a They were called "floating surrogates," and had the same jurisdiction as the supreme court; to which, however, appeals lay for all sums above £40.

The first newspaper published in the colony, appeared in 1807, under the title of "The Royal Gazette and Newfoundland Advertiser;" and in 1809, a post-office was established at St. John's.

Surrogate Courts were extended to the coast of Labrador in 1811; and those lands known by the appellation of "Ship's Rooms," were ordered to be leased to the highest bidder. Those situated in some of the most convenient places for business along the harbour of St. John's, were always considered a great nuisance, and an impediment in the way of trade.

During the war, Newfoundland prospered, and riches flowed in among the inhabitants; but the peace of 1814 was attended by a sudden transition in the trade of the colony, from the highest pitch of commercial success to the lowest point of depression. Several houses failed in consequence; and the inhabitants, not having those resources which an agricultural country affords, were reduced to great misery. The vast destruction of property by fire soon after at St. John's, occasioned also much distress, and drove many of the inhabitants from the island.

Newfoundland has, however, recovered gradually from the deplorable condition it was in from the peace until 1818, which fortunately turned out a most successful year in the seal and cod fisheries.

This year Governor Pickmore died at St. John's and his body was carried to England in his majesty's ship *Fly*. He was the first resident governor, and succeeded the naval commanders who administered the government of Newfoundland while on the station during the fishing seasons, but who returned to England on the approach of winter. Sir Charles Hamilton, the first permanent resident governor, was appointed to the administration of the affairs of the colony this year. He was succeeded by the present governor Sir A. Cochrane, and a captain in the royal navy.

CHAPTER III.—*Government, and Administration of Justice—Laws—Expenses of the Colony—Value of its Commerce, &c.*

The power of the governor of Newfoundland is much the same as that of the governors of the other colonies, except in those matters in which a legislative or representative form of constitution makes an alteration or difference. He appoints justices of the peace, suspends at pleasure all officers who hold their commissions from the crown, grants marriage licenses, has the supreme command of the regular forces and the militia, and is also vice-admiral of Newfoundland and Labrador.

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The supreme court of judicature, as now constituted, has a chief justice and two assistant justices. It has criminal and civil jurisdiction, and is also a court of record. It holds plea of all crimes and misdemeanors committed within the island of Newfoundland, the coast of Labrador, and dependent islands, agreeably to the laws and practice of England, and the acts of Parliament for regulating judicial proceedings in Newfoundland. It also holds plea for the recovery of debts due by persons residing, or having property, in Newfoundland, although such debts should have been contracted in Great Britain, or other parts of his majesty's dominions.

The Court of Vice-Admiralty, held by a judge commissary, has had little to do since the last war. It holds cognizance of maritime causes, and causes of revenue. Appeals lie from it to the High Court of Admiralty in England.

There is a Court of Probate, held by the chief justice and assistant justices, for the probate of wills, and granting letters of administration.

At St. John's, and at most of the out-harbors, where the population renders it necessary, there is a court of session, held by two magistrates, who have the same jurisdiction as in England.

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The Surrogate Courts were, from the beginning, considered at once grievous and exceedingly objectionable, as the judges were no other than the commanders or lieutenants of his majesty's ships on the station, whose pursuits and education could not qualify them, however just their intentions might be, for competent expounders of the intricate labyrinth of commercial laws. At the same time, it is but justice to remark, that the task was by no means agreeable to many of those officers; and, with few exceptions, if they erred, it was not from the influence of fear or interest, but from an ignorance of matters that no one should expect them to understand. But in this way the jurisdiction of Newfoundland was conducted until 1824, when a bill was passed, entitled, "An act for the better administration of justice in Newfoundland, and other purposes." This act, like all others passed relative to Newfoundland, being experimental, was limited to continue in force only for five years. By the provisions of this act, a chief judge and two assistant judges are appointed, and the island divided into three districts, in each of which a court is held annually.

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It is certain that none of the British plantations have been worse governed than Newfoundland, nor in any has more confusion prevailed. By the constitutions granted to all the other colonies, a clearly defined system of jurisdiction was laid down; but the administration of Newfoundland was, in a great measure, an exclusively mercantile or trading government; which, as Adam Smith very justly observes, "is perhaps the very worst of all governments for any country whatever;" and a powerless planter, or fisherman, never expected, or seldom received, justice from the adventurers, or the fishing admirals, who were their servants. Mr. Reeves, in his History of Newfoundland, states, "that they had been in the habit of seeing that species of wickedness and anarchy ever since Newfoundland was frequented, from father to son; it was favourable to their old impressions, that Newfoundland was theirs, and that all the plantations were to be spoiled and devoured at their pleasure."

There is no doubt but that so arbitrary an assumption and practice of misrule produced the consequences that severity always generates; and that the planters soon reconciled themselves to the principles of deceit and falsehood, or to the schemes that would most effectually enable them to elude their engagements with the adventurers. The resident fishermen, also, who were driven from time to time out of Newfoundland, by the statute of William and Mary, generally turned out the most hardened and depraved characters wherever they went.

The measures adopted for the administration of the affairs of Newfoundland, during the government of Vice-Admiral Sir Charles Hamilton, and since the appointment of his successor, will likely lead in time to whatever is necessary for the better distribution of justice. But the peculiar circumstances of Newfoundland as a great fishing colony, the greater part of the proceeds of which are remitted to England in payment of British manufactures, and the depressed state of the fisheries, imperatively demand that no burden whatever shall be laid upon those fisheries, either for the support of the executive or judicial powers, or for any other purpose whatever. Should his majesty's ministers decide on laying an *ad valorem* duty on imports into Newfoundland, it will most assuredly, with the advantages that the Americans and French possess, annihilate the British fisheries at Newfoundland. This is not my opinion alone, but the opinion of the oldest and best acquainted with that colony. If public buildings are necessary, or a more expensive form of government expedient, neither can be supported at the expense of the fisheries.

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In the carrying trade to and from Newfoundland, there are about 400 vessels, the tonnage of which amounts to about 50,000 tons; two-thirds of these vessels belong to the United Kingdom, the rest are colonial. Most of these vessels make two voyages; some three, and some four. The Custom-house entries average, at the different harbours of entry, for the last four years, as follows:—

St. John's.....	455	vessels entered and cleared.
Harbour Grace	105	
Trinity	37	
Twillingate	30	
Bay of Bulls.....	3	
Ferryland	25	
Placentia	10	
Benin	45	
St. Lawrence.....	9	
Fortune Bay.....	34	

753 vessels, exclusive of those
entered and cleared direct
at Labrador.

Of the above vessels, the entries and clearances were—

Great Britain.....	298
Foreign, Europe, and Brazil.....	193
British America	182
West Indies	72
United States	8

753

In this number, neither the coasting nor sealing vessels, about 350, are taken into account.

CHAPTER IV.—Description of St. John's and other Settlements.

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The whole of the west coast of Newfoundland, north of the bay St. George, is unsettled, although some of the lands are the best on the island. At the bay of Port au Port there is plenty of coal. The Bay of Islands receives three fine rivers, one of which, called the

Humber, runs out of a large lake.^a Farther north is Bonne Bay, which branches into two arms; and then follow several small coves, bays and rivers, for about sixty miles, where the Bay of Ignorachoix, containing three harbours, enters the island.

A few miles nearer the strait of Belle Isle, St. John's Bay is situated, containing several islands, and receiving the waters of Castor river, which flows through about thirty miles of country. The lands about this bay are mountainous. The coast, for about thirty miles north, is indented with small rivers and numerous minor inlets; and then along the strait of Belle Isle to Cape Norman, the most north-westerly point of Newfoundland, a straight shore prevails, along which an old Indian path is observable.

CHAPTER V.—*Strait of Belle Isle—Continent of Labrador—Anticosti—Magdalene Islands.*

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MAGDALEN ISLANDS.

This cluster of islands is situated within the Gulf of St. Lawrence, seventy-three miles distant from Newfoundland, sixty miles from Prince Edward Island, and sixty-five miles from Cape Breton. They are the property of Sir Isaac Coffin, who appears to take very little interest in them.^b The inhabitants about 500 in number, are Arcadian French, who live principally by means of fishing. In the month of April, they go in their shallops among the fields of ice that float in the gulf, in quest of seals; and in summer, they employ themselves in fishing for herring and cod.

The soil of these islands is a light sandy loam, resting on freestone. It yields barley, oats, and potatoes; and wheat would likely grow, but the quantity of soil fit for cultivation, is no more than the fishermen require for potato gardens, and a little pasture. Some parts are covered with spruce, birch, and juniper-trees; others are formed into sandy downs, producing bent grass; cranberries, juniper berries, and various other wild fruits, are very abundant.

A few miles to the north, Brion and Bird Islands are situated. Multitudes of aquatic birds frequent them for the purpose of hatching. I have seen shallops loaded with eggs, in bulk, which were brought from these islands to Nova Scotia and Prince Edward Island for sale.

The Magdalen Islands are under the government of Canada,^c and the inhabitants are amenable to the courts of Quebec, 600 miles distant; a most inconvenient regulation, when they are so much nearer Prince Edward Island.

There is a chapel, in which a priest sent from Quebec officiates. Plentiful fishing banks, of which the Americans of the United States derive the principal advantage, abound in every direction near these islands.

^a This lake is only known to the Indians, who describe it as sixty miles long. There is a dark-grey marble found at Bay of Islands.

^b Since the above was written, the worthy baronet, it is said, has taken measures to direct the application of the rents which may be derived from these islands, to the support of a number of his relatives in the American Navy.

^c Annexed to that government in 1809, by 49 Geo. III, cap. 27.

EXTRACTS FROM "REPORTS ON SEA AND RIVER FISHERIES OF
NEW BRUNSWICK," BY H. M. PERLEY, 2d ED., 1852.

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FAMILY 3.—Scombridae.

GENUS 1.—*Scomber*—The Mackerel.

SPECIES 1.—*Scomber vernalis*—The Spring Mackerel.

SPECIES 2.—*Scomber grex*—The Fall Mackerel.

These two species of mackerel are generally believed to be but one; but Cuvier considers them as different, and in this has been followed by Dr. De Kay of New York. The *scomber vernalis* is the ordinary mackerel of commerce, while *scomber grex* would seem to be those little mackerel about ten inches in length, which are found in scattered numbers every where, and are called by the fishermen of the Bay of Fundy, "tinker mackerel," from their wandering habits.

Although the mackerel is caught in great quantities on the northern coast of New Brunswick, and within the Bay of Chaleur, as also around the Magdalen Islands, yet it is rarely known to visit the coast of Labrador. It is stated by Mr. Horatio Robinson Storer, of Boston, who visited the Labrador coast in 1849, that mackerel appeared there in great abundance that season, at the Island of Little Mecatina; but no fishing vessels being at hand, they departed again unmolested, the few settlers on that desolate coast having neither nets or lines for taking them. The mackerel fishery of Nova Scotia furnishes one of its largest exports. In 1850, no less than 96,650 barrels of mackerel were exported from the port of Halifax alone. Many of these were taken in the vicinity of Sable Island, and were of the finest quality.

Mackerel were formerly abundant near the coast of Newfoundland, but none have been taken there since 1837. They were also plentiful formerly in the Bay of Fundy, near Grand Manan and West Isles, where but few are now taken.

The great resort of the American mackerel schooners is on the north and east side of Prince Edward Island, and in the vicinity of Miscou, at the entrance to the Bay of Chaleur. There is also good mackerel fishing within the Straits of Northumberland, especially off Buctouche and Richibucto.

The mackerel taken in the early part of the season are generally very poor; they improve in quality as the season advances, those taken latest being by far the best. It is now considered settled, that the mackerel is not a migratory fish, but draws off into deep water, at the approach of winter, and returns to the shallow water near the shores, at the beginning of summer, for the purpose of depositing its spawn.

GENUS 3.—*Mallotus*.

SPECIES 1.—*Mallotus villosus*—The Capelin.

This, the smallest species of the salmon family, inhabits the northern seas only, never ranging farther south than the shores of New Brunswick. It is very nearly allied to the genus *osmerus*, from which however it differs in the smallness of its teeth, and in certain other particulars. Some naturalists have called this fish *salmo grænlændicus*, while others have classed it among the herring family. Cuvier has

decided, that it belongs to the salmonidæ, to which it now seems settled it properly appertains.

The capelin is from 4 to 7 inches in length, the under jaw longer than the upper; the back and top of the head a dull leek green, with bright green and yellow reflections, when moved in the light; sides and belly covered with delicate and very bright silvery scales, which are dotted on the margins with black specks; the back covered with small smooth grains, like shagreen.

The manner in which the capelin deposits its spawn, is one of the most curious circumstances attending its natural history. The male fishes are somewhat larger than the female, and are provided with a sort of ridge, projecting on each side of their back bones, similar to the eaves of a house, in which the female capelin is deficient. The latter, on approaching the beach to deposit its spawn, is attended by two male fishes, who huddle the female between them, until the whole body is concealed under the projecting ridges, and her head only is visible. In this position, all three run together, with great swiftness, upon the sands, when the males, by some inherent imperceptible power, compress the body of the female between their own, so as to expel the spawn from an orifice near the tail. Having thus accomplished its delivery, the three capelins separate, and paddling with their whole force through the shallow water of the beach, generally succeed in regaining once more the bosom of the deep; although many fail to do so, and are cast upon the shore, especially if the surf be at all heavy.

The Rev. Mr. Anspach, in his work on Newfoundland, thus describes the arrival of the capelin schull at Conception Bay, where he resided for some years:

“It is impossible to conceive, much more to describe, the splendid appearance, on a beautiful moonlight night at this time. Then, the vast surface of the Bay is completely covered with myriads of fishes, of various kinds and sizes, all actively engaged, either in pursuing or avoiding each other. The whales, alternately rising and plunging, throwing into the air spouts of water; the cod-fish, bounding above the waves, and reflecting the light of the moon from their silvery surface; the capelins, hurrying away in immense shoals, to seek a refuge on the shore, where each retiring wave leaves multitudes skipping upon the sand, an easy prey to the women and children, who stand there with barrows and buckets, ready to seize upon the precious and plentiful booty; while the fishermen in their skiffs, with nets made for that purpose, are industriously engaged in securing a sufficient quantity of this valuable bait for their fishery.”

Like the common smelt, the capelin possesses the cucumber smell; but it differs from the smelt in never entering fresh water streams.

As an article of bait for cod, and other fish of that class, the capelin is of much importance; wherever abundant, the cod fishing is excellent. It has been found as far north in the arctic regions as man has yet penetrated; and it forms so important an article of food in Greenland, that it has been termed the daily bread of the natives. In Newfoundland, it is dried in large quantities, and exported to London, where it is sold principally in the oyster shops.

FAMILY 4.—Clupeidae.

GENUS 1.—*Clupea*.SPECIES 1.—*Clupea elongata*—Common American Herring.

As the herring of North America has been found to differ greatly from the herring of Europe, (*clupea harengus*), the naturalists of the United States have distinguished it by the name of *clupea elongata*. Fishermen designate it by the name of "blue-jack", and sometimes call it the "English herring;" very often, they add the name of the locality where it is taken, to distinguish particular varieties.

The statements made by the older naturalists, as to vast armies of herrings coming down annually from the Arctic Ocean, and making the circuit of the seas, is now supposed to be wholly imaginary. It is generally believed, at present, that the herring fattens in the depths of the ocean, and approaches the shore in shoals, merely for the purpose of depositing its spawn. In this opinion, Mr. Yarrell fully coincides, and there can scarcely be a better authority. It is quite certain, that the common herring is caught on the shores of New Brunswick during every month of the year, which quite precludes the idea of its being a migratory fish.

It is found everywhere on the coast of Nova Scotia; and from the information obtained by the writer during his official inspection of the fisheries, it appears certain, that there are several varieties of the common herring, some of which spawn early in the spring, and others in August and September; also, that the quality varies very considerably in different localities. The habits, haunts, and seasons, of this fish are only beginning to be understood, and accurate observations on these, would be highly useful to all who are interested in the herring fishery.

SPECIES 2.—*Alosa tyrannus*—The Gaspereau, or American Alewife.

The alewife appears in great quantities in the Chesapeake, in March; at New York, it appears with the shad. The earliest fish appear in the Harbour of St. John, in April, but the main body does not enter the river before the 10th of May. It would therefore appear, that the alewife also comes from the south, like the common shad, to deposit its spawn in northern rivers.

The usual length of this species of shad, which is best known in New Brunswick and Nova Scotia, by the name of gaspereau, is from 8 to 10 inches; the back a blue green, approaching to purple; sides, silvery. The head, dark green above, and the tip of the lower jaw of the same colour; opercles, yellow.

In the Bay of Fundy, this fish is abundant; in the Gulf of Saint Lawrence, it is less plentiful, and of much smaller size; in the Bay of Chaleur, it has not yet been noticed, and like the shad, the Bay of Miramichi would seem to be its extreme northern limit.

The catch of the gaspereau in the Harbour of Saint John, varies from 12,000 to 16,000 barrels each season, and sometimes reaches 20,000 barrels. It ascends the Saint John to the same localities as the shad, in order to deposit its spawn. In the Miramichi, it ascends to the source, and spawns in the Miramichi Lake.

FAMILY 1.—Gadidae.

This family is one of the most important to man in the whole class of fishes.

GENUS 1.—*Morrhua*—The Cod.

SPECIES 1.—*Morrhua vulgaris*—The Common Cod.

SPECIES 2.—*Morrhua Americana*—The American Cod.

The first of these two species is the common cod of Newfoundland, well known as an article of food, the wide world over. Among fishermen, it is designated the bank cod; it is taken in deep water off the coast of Nova Scotia, and also in the entrance to the Bay of Fundy, between Brier Island and Grand Manan. It is always a thick, well-fed fish, and often attains a great weight, sometimes 70 or 80 pounds, and even more. The colour varies much in individuals, but is generally a greenish brown, fading into ash colour when the fish is dead, with many reddish yellow spots; the belly, silvery opaque white; the fins, pale green; the lateral line, dead white.

This fish is taken from the coast of Maine northwardly, as far as man has penetrated. Captain James C. Ross states, that on the west coast of Greenland, in latitude $60^{\circ} 30'$ north, a number of very fine codfish were caught by the crew of the "Victory", on a bank consisting of small stones, coarse sand, and broken shells, with 18 to 30 fathoms over it. At the Peninsula of Boothia, Captain Ross purchased cod from the Esquimaux, who caught them through holes in the ice.

The Commissioners of British Fisheries, in their Report to Parliament for the year 1846, state that two vessels in that year, proceeded for the first time, from the Shetland Islands to Davis' Straits, for the prosecution of the cod fishery, and were very successful, the number of fish taken having been 29,403 cod. The fish were caught in the ordinary manner, with hand-lines and bait. So plenty were they in some places not far from the shore, that they were caught with *raspers*, or by letting down and drawing up a line with several bare hooks fixed thereon, tied back to back. The fish were, however, chiefly caught upon a bank, with a depth of water from 15 to 40 fathoms, in latitude 66° and 67° north, and 55° west longitude, from 30 to 40 miles off the land. The codfish were in so great abundance, that nearly 2000 fish were caught by the 20 men on board, in the course of 24 hours; the whole quantity was fished in 28 days, being an average daily catch of 1000 fish. Some of the fish, when taken out of the sea, weighed about 80 lbs., and when dressed, about 60 lbs. They were of excellent quality, and their livers were so rich, that they were preserved, with the firm conviction they would produce six tons of oil. In 1847, another successful attempt was made by a vessel from Lerwick, to prosecute the cod fishing at Davis' Straits. The vessel reached the fishing ground on the 23d of June, and continued to fish until the 16th of August, during which time 42,143 cod were caught. This was considerably above the take of the previous year, and but for stormy weather, the voyage would have been even more successful.

In September 1851, the writer saw in the fish market of Halifax, a bank cod weighing 55 lbs. It was a female fish, not in good condition, having nearly finished spawning. The fishermen stated, that it was taken off Halifax Harbour, about ten miles from land, in four

fathoms water, on a bank to which the cod resort for spawning in August and September. The largest cod of this species brought into Halifax market, during the season of 1851, weighed 86 lbs.

The second species named above, the American cod, is slightly, though permanently, distinct from the common or bank cod. The back is of a light olive green, (becoming pale ash in the dead specimens) covered with numerous reddish or yellowish spots, to a short distance below the lateral line, which is an opaque white throughout its whole extent.

There are several varieties of the American cod, the most usual of which are the *arenosus*, or shoal cod of Dr. Mitchell, with a greenish brown hue, and inconspicuous spots; and the *rupestris*, or rock cod of the same author, of a smaller size, with a reddish hue, occasionally a bright red, very numerous on the whole coast of Nova Scotia, and in the vicinity of Grand Manan. Fine specimens of this variety may be seen in the fish market of Halifax, during the season; their quality is admirable.

The southern limit of the American cod is New York; thence it ranges northwardly, along the whole coast of North America, to the Saint Lawrence.

It is believed, that there are several species and varieties of cod, within the Gulf of Saint Lawrence, and especially on the coast of Labrador; but these have not yet been examined with precision. In the Gulf, deformed fish are of common occurrence, the deformity frequently consisting in a fore-shortening of the head, whence the fishermen call them "bull-dogs".

The cod is an exceedingly voracious fish. It attacks indiscriminately everything in its way, devouring smaller fish, crustacea, and marine shell-fish. Its stomach is the great repository, from which naturalists have lately obtained so many rare and undescribed species of shells, inhabiting deep water, and which are unattainable by any other means.

A fisherman at Brier Island assured the writer, that he had often seen the cod in shoal water, with their heads straight down and tails up, working mussels and clams off the bottom.

GENUS 2.—*Phycis*.

SPECIES 1.—*Phycis Americanus*—the American Hake.

The geographical range of this fish appears to be from Cape Cod, northwardly. It is taken largely on muddy bottoms, both in the Bay of Fundy and in the Gulf of St. Lawrence, chiefly by fishing during the night, at which time it feeds on the smaller crustacea, with which its stomach is generally found to be filled. In the Gulf of Saint Lawrence, and Bay of Chaleur, it is invariably called "ling," under which name, when salted and dried, it is exported by the Jersey merchants, who have fishing establishments there, and who probably introduced the name.

This fish is frequently taken of the length of three feet, especially in the Gulf; it is of a reddish brown colour, with slight metallic reflections on the cheeks, and a dark patch beneath the orbits; abdomen lighter, mixed with gray. It has one barbule under the chin; the ventral fins are simple rays, divided or forked, one of the divisions longer than the other. Head pointed, flattened above; snout promi-

ment; the upper jaw projects beyond the lower; both jaws are arched with several rows of sharp, incurved teeth, which render necessary an armature of six or eight inches above the hook, as this fish readily bites off a common cod-line.

GENUS 1.—*Hippoglossus*.

SPECIES 1.—*Hippoglossus vulgaris*—The Halibut.

This is a very large fish; it is found on the coast of North America, from Nantucket to Greenland; and is frequently taken of the weight of 200 lbs. Dr. Storer mentions one of these fish brought into Boston market, that weighed 420 lbs. after the head and bowels were removed; and another, that weighed upwards of 600 lbs., which was taken on a bank, sixty miles south east of Portland, Maine.

The halibut is very voracious; it swims near the ground, and devours other flat-fish, as well as shells and crustacea. In summer, it is caught in shallow water, and often quite near the shore; in winter it retires to deep water. The flesh is rather coarse and dry, but it is much esteemed by many; the fins and flaps are delicacies, if the fish is in good condition. When the fishermen of the Bay of Fundy take a number of these fish at one time, they salt the fish lightly, and then dry and smoke it for winter use.

On some parts of the coast of Nova Scotia, this fish is found in such abundance, and of so large size, that the localities are avoided by those engaged in cod-fishing, as a boat, or small vessel, becomes soon heavy laden.

Both eyes, and the colour of the halibut, are on the right side; but Dr. Storer mentions, that reversed specimens are sometimes met with, and says he examined a fish of this species, in Boston market, weighing 103 lbs., with the left side coloured, and bearing the eyes.

EXTRACTS FROM AN ARTICLE ON FISHERIES PUBLISHED IN THE
ENCYCLOPEDIA BRITANNICA, NINTH EDITION, 1879.

* * * * *

The question of how long our present large supply of sea fish is likely to continue is one of much interest, and the answer to it depends on whether or not our fisheries are carried on in such a manner as to cause more destruction of fish life than can be compensated for by the vast reproductive powers of those fishes which escape the nets and hooks of the fishermen. For more than fifty years past the cry has been periodically raised that our fishermen are being ruined. The general complaint has been of the wasteful destruction of spawn and very young fish by beam-trawling and sean nets; and in 1863 the outcry was so loud that a Royal Commission was appointed, not only to examine this question, but also to inquire into the general condition of all our sea fisheries, the special objects of inquiry being the state of the supply of fish, and the question whether the methods of fishing in use involved a wasteful destruction of fish or spawn, and whether existing fishery restrictions operated injuriously on the fisheries. On these points the commissioners, after taking evidence all round the British Islands, were enabled to give a

very decided opinion. They reported that the supply of fish generally had largely increased, that the methods of fishing involved no waste of young fish that could be prevented without interfering with the general fisheries, that spawn was not destroyed by the nets, and that all fishery restrictions should be removed except such as were desirable for protecting and keeping order among the fishermen. The recommendations of the commissioners were embodied in an Act of Parliament known as The Sea Fisheries Act 1868, by which, with one or two small exceptions relating to herring fishing on the west coast of Scotland, previous Fishery Acts were repealed, and fresh regulations made having reference to the registration of fishing boats, keeping order among drift-fishermen and beam-trawlers, and providing a close time for oysters in the English Channel. The main object of the Act was to carry out a convention between the British Islands and France, for the better ordering of the fisheries in the seas adjoining the two countries. The Act came into force in England on the 1st of February 1869, but circumstances have hitherto prevented any date being fixed for carrying out the convention on the part of the French. Great advantage has undoubtedly been gained by British fishermen from the substitution of the present simple fishery regulations for the numerous Acts previously existing, many of which had long been obsolete; but the Royal Commission, which was issued virtually to inquire into the alleged destruction of fish spawn on the ground by beam-trawlers, would probably have never come into existence had the facts then been known which have since come to light about the spawning habits of most of our edible fishes. These facts are so important that a short notice of them may be given here.

Fishermen are in the habit of asserting with perfect confidence that fishes of almost every kind they are accustomed to catch have certain grounds which they frequent at particular seasons for the purpose of depositing their ova. The herring is known to spawn on the ground—at all events the spawn is found there in irregularly shaped lumps adhering to the bottom. It has therefore been concluded that all kinds of fishes have the same habits in this respect. Yet no one has been able to speak positively of having ever seen any fish spawn taken from the ground except that of herring. Various soft and gelatinous substances are brought on shore by the sea nets, and commonly go by the name of spawn among the inshore fishermen; but that they are not fish spawn is perfectly well known to any one who has given attention to the variety of curious animal organisms inhabiting the sea.

It was stated by Professors Huxley and Allman in 1867, before the select committee of the House of Commons on the Sea Coast Fisheries (Ireland) Bill, as within their personal knowledge, the fish ova had been found floating at the surface of the sea, and that the ova they had met with were in all cases alive, and some of them in an advanced state of development. Reference was at the same time made to the observations then recently recorded by Norwegian naturalists on the spawning habits of the common cod, leading to the belief that spawning at the surface was by no means uncommon with our sea fishes. These investigations have been systematically carried on during the last ten years, under the direction of the Swedish Government, by Professor G. O. Sars of the university of

Christiania, and have resulted in some unexpected discoveries. The seas in the neighbourhood of the Loffoden Islands on the coast of Norway had long been known to be a great place of resort for cod during the spawning season; and in 1864 Professor Sars commenced his work there, and by means of a small surface towing net he obtained plenty of the ova of the common cod (*Gadus morrhua*) floating at the surface; examples in various stages of development were procured, the young fish were successfully hatched out, and the species identified beyond a doubt. Subsequent observations fully confirmed the accuracy of the conclusions previously arrived at that the cod spawn was not deposited on the ground but floated freely at or near the surface. In 1865 the same observations were made on the ova of the haddock (*Gadus aeglefinus*), and it was satisfactorily proved that they went through all their stages of development while floating at the surface, in precisely the same manner as in the case of the cod. Sars was at first inclined to believe this development of the ova while floating was peculiar to the members of the *Gadidae* or cod family, in its restricted sense; but in the summer of 1865 he visited the southern coast of Norway during the season for mackerel, and found abundant evidence of the same rule obtaining in that widely distinct fish. In the case of mackerel, the spawning actually takes place at the surface; but with the cod family we believe the operation has not been so distinctly observed. The ova, however, are undoubtedly met with at the surface and at a short distance below it. Entirely subversive as these discoveries of Professor Sars are of the popular notions about fish-spawning, it is even more unexpected to find that both he and M. A. W. Malm of Gothenburg have independently ascertained that the ova of that essentially ground-fish the plaice (*Pleuronectes platessa*) follow the same rule of floating at the surface. Other kinds of floating ova were also obtained by Sars, some of which he succeeded in hatching; and he has completely identified the gurnard (*Trigla*) and the garfish (*Bellone*), in addition to those before mentioned. It is evident, then, that the floating of fish ova during the development of the embryo must be taken as the general rule in several large and distinct families of sea fish. Sars has pointed out that the development takes place at the bottom in the case of those fishes especially whose ova are cemented together by a glutinous secretion, or fastened in lumps to foreign bodies, such as Algae, Hydroids, etc. He mentions as examples of this, among others, the herring (*Clupea*), the capelin (*Osmerus*), the species of *Cottus*, *Liparis*, etc.

It is particularly worthy of notice that, according to these observations of the Norwegian naturalists, all the important kinds of fish taken by our line fishermen and beam-trawlers, and the mackerel among such as are caught by the drift-nets, may be reasonably included among the species whose spawn floats at or near the surface of the sea, and their ova cannot therefore be liable to the slightest injury by any method of fishing which is carried on upon or near the ground. For if that be the rule with the spawn of the cod and haddock there can hardly be a doubt about its being so likewise with the ova of ling, coal-fish, whiting, pollack, hake, and that northern species, the tusk, all belonging to the same family. Again, turbot, halibut, brill, soles, plaice, dabs, and flounders are all closely allied, and there can scarcely be a doubt that the same rule applies to all which Sars and

Malm have established in the case of the plaice, one of the most typical of this group of fishes. The gurnard family must also be included in this category; the spawn of the red mullet, we believe, has been observed floating in aquariums; and the dory, from its close affinity to the mackerel, may be expected to follow the same rule. On the other hand, we know that the spawn of the herring is commonly found at the bottom, although it by no means follows that the parent fish is there when the ova are excluded; for the full herring is frequently taken in drift nets which are very near the surface, and these nets are often covered with small lumps of spawn. At the same time the specific gravity of herring spawn is greater than water, and it sinks to the bottom sooner or later if nothing intercepts it. There is no evidence of its ever floating at or near the surface as is the case with that of the cod. In fact, the aggregation of the ova into masses of various sizes, and the glutinous substance in which the ova are embedded, by which they are enabled to adhere firmly to anything with which they may come in contact, point to their remaining in a fixed position during the process of development. It might have been anticipated that the other members of the herring family—the pilchard and sprat, for instance—would also have spawned on the ground, but, so far as we are aware, their ova have never been found there. Indeed, nothing is known of the spawning habits of the sprat, although this little fish has the roe well developed in December or January, when it is found in the greatest abundance on our coast, and comes nearest to the shore. The spawning of the pilchard is a matter of some little interest. The late Mr. Jonathan Couch, who probably devoted more time to the study of the habits of this fish than any other ichthyologist states^a his belief that the pilchard spawned at the surface, and the ova became mixed with a large quantity of tenacious mucus which spread out like a sheet on the water and kept them floating. If this should be confirmed it will prove that even in the case of agglutinated masses of ova, development may naturally take place in them far away from the bottom. There appears to be little doubt that the pilchard spawns far out at sea, as they are on chance occasions taken in spawning condition in the mackerel drift-nets early in the year; and when, some months later, the shoals of pilchards approach the land the roe shows no signs of development. These circumstances favour the idea that pilchards are surface spawners, as believed by Mr. Couch.

There are several other kinds of edible fish of whose spawning habits we have no definite knowledge, but enough has been discovered of the habits of most of the fish which are valuable for the purposes of food, to show that there need be no anxiety about their spawn being destroyed by any of the methods of fishing in ordinary use. The only apparent exception to this statement is in the case of the herring, whose spawn it has been alleged has been destroyed by the beam-trawlers. But if the beam-trawlers wish to avoid tearing their nets in pieces, they must work where the ground is smooth; and in the few precise localities where it has been positively ascertained that the herring does spawn, the general character of the bottom is rough. That is the ground specially worked over by the line fishermen for haddock, cod, turbot, and other fishes, which come there in

^a History of British Fishes, vol. iv, p. 81 (1865)

numbers for the sake of feeding on the herring spawn. There is a popular idea that all fish spawn is of a most delicate nature, and quickly loses its vitality if taken out of the water for a short time, or at all knocked about. This is probably true in those cases in which the ova are separated from each other after exclusion, and float freely in the water; but it is not so with the spawn of the herring, or probably of other fish whose ova are embedded in a tenacious mucus. The experiments of Professor Allman and of Dr. M'Bain have shown that herring spawn does not readily lose its vitality under rough treatment, and may even be hatched out after having been exposed to most unnatural conditions. Professor Allman states in his Report to the Board of Fisheries at Edinburg that some stones covered with spawn were taken from the sea by divers on the 1st of March, 1862, not far from the Island of May. Some of this spawn was forwarded to him and came into his possession after being kept in only a small quantity of water for two entire days. He says:

"With the view of determining whether development would proceed in confinement, I placed some of this spawn in a glass jar with sea-water, exposing it in a window looking to the east. The several stages of development were regularly passed through, and on the 15th of March the embryo was fully formed. Energetic movements were performed by it in the ovum, and it seemed ready to escape into the surrounding water. On the 16th some of the embryos had actually escaped, and were now about four-tenths of an inch in length. They were of crystalline transparency, and swam about with great activity and with the remains of the yolk, reduced now to a very small volume, still adhering to them. The specific characters had, of course, not yet become established, and the little fish afforded no further evidence, beyond what we already possessed, to enable us to identify it with the young of the herring."

The young fish lived nearly a month in confinement, but the specific characters were not even then sufficiently perfected to identify the fish with certainty. There could be no reasonable doubt, however, that the spawn was that of the herring.

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We will now proceed to give an account of the several valuable fisheries carried on around the coasts of the British Islands, with some details of the appliances in use, and the manner in which they are worked.

English fisheries.—On the coast of England the methods of fishing in general use are more numerous than in the case of either Scotland or Ireland, the fishing grounds are more extensive, and the total supply of fish obtained is larger and more varied in kind. The principal modes of fishing are by the beam-trawl, the drift-net, the sear, the stow-net, and lines. Their relative importance varies to some extent, but trawling and drift-net fishing occupy by far the most conspicuous positions, and lines come next in order.

Trawling.—The most characteristic mode of fishing is that known in England as "trawling," or in Scotland as "beam-trawling," and consists in towing, trailing, or trawling a flattened bag-net, often 100 feet long, over the bottom in such a manner as to catch those fish especially which naturally keep close to or upon the ground. It is very desirable that the name "trawl" should be restricted to this net,

presently to be described, as much confusion has been caused by the practice, general in Scotland (which has misled even such writers as Mr. Couch, see *Fishes of the British Islands*, iv. 105), of applying the name to that very different kind of net which has for centuries past been almost universally known as the "sean," "seine," or "seyne," and may be traced back through the Saxon *segne* to the Latin *segena*, a sweep-net. In the United States and Canada, the word "trawl" is still more misapplied, being given to what is in England commonly called the long line or bulter.

The beam trawl may be simply described as a triangular, flat, purse-shaped net with the mouth extended by a horizontal wooden beam, which is raised a short distance from the ground by means of two iron frames or heads, one at each end, the upper part of the mouth being fastened to the beam, and the under portion dragging on the ground as the net is towed over the bottom. The beam of course varies in length according to the size of the net, and depends to some extent also on the length and power of the vessel which has to work it. In the large "smacks", as the trawl-boats have long been called, the beam ranges from 36 to 50 feet in length; and there is rarely anything less than this now used by the deep-sea trawlers. Elm is generally preferred for it, selected if possible from timber grown just of the proper thickness, that the natural strength of the wood may not be lessened by more trimming or chipping than is absolutely necessary. If the required length and thickness cannot be obtained in one piece, two or even three pieces are scarfed together, and the joints secured by iron bands. When the trawl is being hoisted in, the first part of the apparatus taken on board is the large heavy beam, and this is very commonly done when the vessel is rolling and pitching about in a seaway. It is therefore necessary for the sake of safety that the beam should be secured as soon as possible, and in such a position as to be out of the way and at the same time conveniently placed for lowering again when required. All this may be easily effected by having the beam of such a length in proportion to the size of the vessel that when hoisted up, one end of it may come over the taffrail, with the iron head just clear outside, and the fore end in front of one of the shrouds. It then lies on the gunwale of the vessel, and the ends are secured by ropes, the forerigging preventing that end of the beam coming on board, but the iron head passing in between the shrouds. The object or use of the beam is to extend the mouth of the net; but, in order to allow room for the fish to enter, the beam, and with it the back of the net which is laced to it, must be raised a certain distance from the ground. For this purpose the beam is fastened at each end to the top of an iron frame, shaped somewhat like an irregularly formed stirrup, which is fitted to it at right angles by a square socket at the top. By these "heads or irons" the beam is supported at a height of nearly 3 feet from the ground, and contrary to the popular idea on the subject, never touches the bottom. It could only do so if the trawl were to reach the ground with its back undermost, and then the mouth of the net would close and no fish could enter. The lower part of the trawl-head or iron is straight and flat, just like the corresponding part of a stirrup. It is called the "shoe", and is the part which slides over the ground as the trawl-beam and following net are towed along. There is a slight variation in the form of the

trawl-irons, and one, known as the Barking pattern, from having been adopted at that old trawling station on the Thames, is shaped exactly like a stirrup; but generally the irons are preferred with the aft side straight. We now have the long beam supported at each end by a more or less stirrup-shaped iron fitted at right angles. The next thing to be considered is the net. This was previously spoken of as flattened and purse-shaped. When the net is spread out in the manner it would be when working; the upper part or back has its straight front edge fastened to the beam, but the corresponding lower part or belly is cut away in such a manner that the front margin forms deep curve extending from the shoe of the trawl-head to the other, the centre of the curve or "bosom," as it is called, being at a considerable distance behind the beam. The usual rule in English trawls is for the distance between the beam and the bosom to be about the same as the length of the beam. In French trawls this distance is generally much less; but in all cases the beam and back of the net must pass over a considerable space of ground when the trawl is at work before the fish are disturbed by much of the lower margin of the net. This lower edge of the mouth of the trawl is fastened to and protected by the "ground-rope," which is made of an old hawser "rounded" or covered with small rope to keep it from chafing, and to make it heavier. The ends of the ground-rope are fastened at each side by a few turns round the back of the trawl-heads, just above the shoe, and the rope itself rests on the ground throughout its entire curve. The fish which may be disturbed by it have therefore no chance of escape at either the sides or back of the net, and as the outlet under the beam is a long way past them, and is steadily moving on, their fate is sooner or later decided by their passing over the ground-rope and finding their way into the funnel-shaped end of the net, from which a small valve of netting prevents their return. The ground-rope is the part which directly bears on the ground, and to prevent the possibility of the fish passing under it, the rope should have some weight in it so as to "bite" well, or press the ground closely. It is, however, always made of old material, so that it may break in case of getting foul of rocks or such other chance obstruction as may be met with on the generally smooth ground where the trawl can only be worked with advantage. If in such a contingency the rope were so strong and good as not to break, there would be serious danger of the tow-rope snapping, and then the whole apparatus might be lost; but the ground-rope giving way enables the net to be cleared and hauled up with probably no more damage to it than the broken rope and perhaps some torn netting. The remaining part of the trawl extending from the bosom to the extreme end, forms a complete bag gradually diminishing in breadth to within about the last 10 feet, which part is called the "cod or purse," and is closed by a draw-rope or "cod-line" at the extremity when the net is being used. This is the general receptacle for the various fishes which enter the net; and when the trawl is hauled up and got on board the vessel, the draw-rope is cast off and the fish all fall out on the deck. We must now say a few words about the ingenious contrivances for preventing the escape of the fish which have entered the purse and reached the farthest extremity of the net. It has been mentioned that the body of the net tapers away to the

entrance to the purse. It is at this point the opening of the pockets are placed; and they are so arranged that the fish having passed into the purse, and then seeking to escape by returning along its sides, are pretty sure to go into the pockets, which extend for a length of about 15 or 16 feet along the inner side of the body of the net, and there, the more they try to press forward, the more tightly they become packed, as the pockets gradually narrow away to nothing at their upper extremity. These pockets are not separate parts of the trawl, but are made by merely lacing together the back and belly of the net, beginning close to the margin or side nearly on a level with the bosom, and then carried on with slowly increasing breadth downwards as far as the entrance to the purse. At this point the breadth of the net is divided into three nearly equal spaces, the central one being the opening from the main body of the net into the purse, or general receptacle for the fish, which must all pass through it, and those on each side being the mouths of the pockets facing the opposite direction. The central passage has a valve or veil of netting called the "flapper," which only opens when the fish press against it on their way into the purse. To understand clearly the facilities offered to the fish to enter the pockets, it is necessary to remember that the trawl, when at work, is towed along, with just sufficient force to expand the net by the resistance of the water. But this resistance directly acts only on the interior of the body of the net between the pockets and then on the purse; it does not at first expand the pockets, but tends rather to flatten them, because they are virtually outside the general cavity of the trawl, and their openings face the further end of it. The water, however, which has expanded the body of the net, then passes through the flapper or valve, and enters the purse, which, being made with a much smaller mesh than the rest of the net, offers so much resistance that it cannot readily escape in that direction; return currents are consequently formed along the sides; and those currents open the mouths of the pockets, which as before mentioned, are facing them; and the fish, in their endeavors to escape, and finding these openings, follow the course of the pockets until they can go no farther. The whole of the net is therefore well expanded, but it is so by the pressure of the water in one direction through the middle, and in the opposite direction at the sides or pockets.

The meshes of an ordinary deep-sea trawl vary in size in different parts of the net, diminishing from 4 inches square near the mouth to 1½ inches in the cod or purse. The under part of the net, being exposed to more wear and chafing than the upper, is usually made with rather stouter twine; and the purse, being especially liable to injury from being dragged over the ground with a weight of fish and perhaps stones in it, has some protection provided by layers of old netting called "rubbing pieces" laced to its under surface. The French fishermen frequently fasten a stout hide to this part of their trawls with the same object.

A deep-sea trawl, such as has now been described, is therefore an immense beg-net, the largest size being about 50 feet wide at the mouth and about 100 feet long. Many of these nets are much smaller, some of them not having the beam more than 36 feet or even less, and the net reduced in proportion; but there has been a great increase in the size of the trawl-vessels in recent years, and at

the same time there has been an enlargement of the nets, although not quite in the same ratio. The trawl is towed over the ground by the trawl-warp, generally a 6-inch rope 150 fathoms long, and made up of two lengths of 75 fathoms each spliced together; one end of this warp is shackled to two other pieces each 15 fathoms long and called the "spans or bridles," which lead one to each end of the beam, and are shackled to swivel-bolts in front of the iron heads so as to give a fair pull on the whole apparatus.

The great development of the trawl fishery in recent years has led to a vast improvement in the kind of fishing vessels employed in it. Fifty years ago the only deep-sea trawlers were in the west of England, and from Barking on the Thames. They were not nearly the tonnage of many of the vessels now used in the North Sea, but were stout, heavy, seagoing craft of their size, and capable of standing almost any description of weather; and, although comfortable, they were certainly not very fast. At that date, however, the fish went into consumption at once, instead of being sent one or two hundred miles before it reached the consumer. The increased demand for fish of late years has led to the building of trawlers of the best description, as remarkable for their fast sailing as for other improved qualities. There is racing home now from the fishing grounds to catch the first of the market, and everything is done as quickly as possible to ensure quick distribution and delivery all over the country. The cost of the vessels has of course largely increased, not only from their greater size, but also because of the much higher price now paid for everything used in their construction. In 1862 a new trawl vessel, and what was at that time considered one of the larger class, could be built and fitted out ready for sea for £700 or £800; but it costs from £1200 to £1300 to turn out one of the vessels now commonly used in the North Sea fishery. This includes a supply of everything necessary for fishing, costing about £70 or £80. A proper fit-out consists of a double set of almost every part of the gear, so as to provide against accidents, and generally to save the time which would be lost if the trawler were obliged to return to port before he had done a fair quantity of work. A trawl-net will perhaps last from two to four months, according to the nature of the ground worked upon; but during that time parts of it will have to be renewed. The back of the net, being exposed to the least wear, lasts the longest; the under part will generally require renewing twice, and the cod or purse five or six times, before the net is finally condemned. The additional size now given to the trawl vessels has led to an alteration in the manner in which they are rigged. The term "smack" has been for a long time applied to those trading and fishing craft which were cutter rigged, and until quite recent years all the trawlers were known as trawl-smacks. It was a convenient rig; the single mast was stepped well forward so as to allow of a large and powerful mainsail, at the same time giving plenty of free space on deck for getting in the net, and stowing it and the long trawl-beam on the top of the bulwark when not at work. But when the size of the vessels was increased to 70 or 80 tons, it was found that the mainsail, enlarged in proportion, wanted a good deal more looking after in bad weather than was convenient, and the heavier main-boom caused a great deal of straining. More hands became neces-

sary on this account than were required for ordinary fishing purposes, and the increased expenses interfered with profitable working. The new trawl-boats were therefore built of greater length, so as to provide room for a small second mast or mizen on which a gaff-sail could be carried, and thus something could be taken off the large mainsail. The result has been very satisfactory; just as much sail is carried as before, but it is not so lofty, and being divided into smaller pieces, it can be handled with greater ease and safety. As a gaff-sail is carried on the mizen, the rig is that of a ketch; had a lug-sail been used instead of a gaff-sail, the vessel would have been what is called "dandy-rigged." The increased length of the vessel in proportion to her size gives many advantages. Space is provided for packing away a considerable quantity of ice, which is a very necessary article in the present mode of working the North Sea trawl fishery; the produce of many fishing days can be properly stowed away and preserved in good condition, and the crew have more roomy and comfortable accommodation,—a point of importance, since at certain seasons they remain at sea for several weeks at a time.

"Barking" the sails is a regular practice with the trawlers, as it is with most other fishermen in England and Scotland. The process consists in mopping them over with a composition of a solution of oak-bark, tar, grease, and ochre, which acts as a good preservative of the canvas. This is done once in six or eight weeks, and a suitable place is kept for the purpose at all the important fishing stations.

Working the beam-trawl requires some little skill which can only be acquired by experience at sea. A knowledge of the ground and of the direction and times of the tide is essential; for the trawl is towed with the stream, a little faster than it is running, so that there may be just sufficient resistance from the water to expand the net. If it were towed too fast, the pressure of the water against the long transverse beam would tend to lift it from the ground, and then the fish would not enter the net. This important point is regulated by a nice adjustment of the length of tow-rope to the force of the wind and state of the sea; and experience enables the fisherman to tell, by pressing the hand firmly on the warp between the vessel and the water, whether or not the trawl is working steadily over the ground. Lowering the trawl to the bottom is also a matter requiring great care, so that it may reach the ground with the beam above the iron heads and the ground-rope in its proper position below. This can only be managed by first getting the whole apparatus in a proper position at the surface, and then keeping the vessel slowly moving through the water whilst the lowering takes place. If, as sometimes happens in spite of all precautions, the net and beam should twist round while being lowered, and the apparatus should reach the bottom with its back downwards, then the beam would be on the ground and the iron supports above, the mouth of the net would close, and no good could be done with it. The only thing for the fisherman to do under such circumstances is to haul up the trawl and shoot it again. The popular idea that the beam is always dragging on the ground is therefore a mistaken one. The trawl is shot at the beginning of the tide, so that it may be towed for five or six hours, and during that time it will probably pass over from fifteen to twenty miles of ground. As trawlers when engaged in fishing are practically anchored by their trawls, they cannot readily get out of the way of

vessels meeting them, and the law admits this view of the case by obliging them at night to carry a single mast-head light as an anchor light, instead of the regulation red and green side-lights for vessels under sail.

When the tide has finished, or the smack has reached the end of its fishing ground, the trawl is hauled up by a winch or capstan. This seldom takes less than three-quarters of an hour in fine weather, and two or three hours if it be rough. The beam is got alongside, and hoisted up and secured; then the net is gathered in, the cod or end of the bag being hoisted in by a tackle, and the cod-rope closing the end being cast off, the whole catch of fish falls out on deck. The fish are immediately sorted and packed away, and the fishermen prepare for another haul, according to the state of the wind and tide.^a

The fluctuations in the herring fishing are very remarkable, but they are not more so on the coast of Scotland than on that of Norway and elsewhere. Indeed, Norway and Sweden afford instances unparalleled in Britain of the disappearance of herrings from particular districts, and their return in the most unexpected manner after a long course of years. On the coast of Scotland, the changes which take place in the fishery consist in an increase or decrease at particular districts, rather than a total disappearance from any one of them. The most marked failure in recent years is in the Firth of Forth, where the summer fishing has now been given up, only a small winter fishing being carried on. At Wick, also, for a great number of years the most important station on the east coast, the herring fishing has been more or less diminishing, while at the same time Fraserburgh, only about 70 miles distant from it, has gradually assumed an unexampled importance. It is true that in 1876 there was an immense falling off in the quantity of fish landed at the latter port, but it was a bad year at almost every station on the east and west coasts, and the almost general decrease arose not from any apparent scarcity of fish, but from the boats being frequently kept in harbor by a continuance of very bad weather during the fishing season, or being unable from the same cause to work their nets when they reached their regular grounds. There is some reason for believing the alleged scarcity of herrings near the land is not so great as has been supposed. Successful fishing many miles out at sea has attracted large numbers of boats from the home waters, and the catches inshore have been consequently much diminished; still the general opinion appears to be well founded that the fish have not entered the firths and lochs in the last few years to the same extent as they used to do. That the fisheries, taken as a whole, have been gradually increasing is shown by the carefully prepared statistics of the Board of Fisheries; and it is desirable to point out that the great increase in the quantity of netting now used is to some considerable extent counterbalanced by the shorter time the nets are in the water; for the boats go long distances to sea, and they have to leave off fishing earlier in order to bring in their fish in good time to the curers.

^a Fuller details of the mode of working the beam-trawl will be found in "Deep Sea Fishing and Fishing Boats," London, 1874.

EXTRACTS FROM LECTURE DELIVERED BY PROFESSOR T. H. HUXLEY AT THE NATIONAL FISHERY EXHIBITION, NORWICH, ENGLAND, APRIL 21, 1881.^a

THE HERRING.

It is now nineteen years since my attention was first specially directed to the natural history of the herring, and to the many important economical and legal questions connected with the herring-fisheries. As a member of two successive Royal Commissions, it fell to my lot to take part in inquiries held at every important fishing-station in the United Kingdom between the years 1862 and 1865, and to hear all that practical fishermen had to tell about the matter; while I had free access to the official records of the Fishery Boards. Nor did I neglect such opportunities as presented themselves of studying the fish itself, and of determining the scientific value of the terms by which, in the language of fishermen, the various conditions of the herring are distinguished.

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In 1864 we had to listen to dolorous prophecies of the coming exhaustion of the Scotch herring-fisheries. The fact that the returns showed no falling off was ascribed to the improvement of the gear and methods of fishing, and to the much greater distances to which the fishermen extend their operations. Yet what has really happened? The returns of subsequent years prove, not only that the average cure of the decade 1869-'78 was considerably greater than that of the previous decade, but that the years 1874 and 1880 are absolutely without parallel in the annals of the Scotch herring-fishery, 1,000,000 barrels having been cured in the first of these years, and 1,500,000 in 1880. In the decade 1859-'68, the average was 670,000 barrels, and the highest 830,000.

In dealing with questions of biology, *a priori* reasoning is somewhat risky, and, if any one tells me "it stands to reason" that such and such things must happen, I generally find reason to doubt the safety of his standing.

It is said that "it stands to reason" that destruction on such a prodigious scale as that effected by herring-fishers must tell on the supply. But again let us look at the facts. It is said that 2,500,000, or thereabout, of herrings are every year taken out of the North Sea and the Atlantic. Suppose we assume the number to be 3,000,000 so as to be quite safe. It is a large number undoubtedly, but what does it come to? Not more than that of the herrings which may be contained in one shoal, if it covers half a dozen square miles—

^a Republished from "Nature" in the Popular Science Monthly, (New York, 1881), Vol. XIX, p. 433.

and shoals of much larger size are on record. It is safe to say that, scattered through the North Sea and the Atlantic, at one and the same time, there must be scores of shoals, any one of which would go a long way toward supplying the whole of man's consumption of herrings. I do not believe that all the herring-fleets taken together destroy five per cent. of the total number of herrings in the sea in any year, and I see no reason to swerve from the conviction my colleagues and I expressed in our report, that their destructive operations are totally insignificant when compared with those which, as a simple calculation shows, must regularly and normally go on.

Suppose that every mature female herring lays 10,000 eggs, that the fish are not interfered with by man, and that their numbers remain approximately the same year after year, it follows that 9,998 of the progeny of every female must be destroyed before they reach maturity. For, if more than two out of the 10,000 escape destruction, the number of herrings will be proportionately increased. Or, in other words, if the average strength of the shoals which visit a given locality is to remain the same year by year, many thousand times the number contained in those shoals must be annually destroyed. And how this enormous amount of destruction is effected will be obvious to any one who considers the operations of the fin-whales, the porpoises, the gannets, the gulls, the codfish, and the dog-fish, which accompany the shoals and perennially feast upon them; to say nothing of the flat-fish which prey upon the newly-deposited spawn; or of the mackerel, and the innumerable smaller enemies which devour the fry in all stages of their development. It is no uncommon thing to find five or six—nay, even ten or twelve—herrings in the stomach of a codfish^a and in 1863 we calculated that the whole take of the great Scotch herring-fisheries is less than the number of herrings which would in all probability have been consumed by the codfish captured in the same waters if they had been left in the sea.

Man, in fact, is but one of a vast cooperative society of herring-catchers, and, the larger the share he takes, the less there is for the rest of the company. If man took none, the other shareholders would have a larger dividend, and would thrive and multiply in proportion, but it would come to pretty much the same thing to the herrings.

As long as the records of history give us information, herrings appear to have abounded on the east coast of the British Islands, and there is nothing to show, so far as I am aware, that, taking an average of years, they were ever either more or less numerous than they are at present. But, in remarkable contrast with this constancy, the shoals of herrings have elsewhere exhibited a change capriciousness—visiting a given locality for many years in great numbers, and then suddenly disappearing. Several well-marked examples of this fickleness are recorded on the west coast of Scotland; but the most

^a In his valuable "Report on the Salt-Water Fisheries of Norway" (1877), Professor Sars expresses the belief that full-grown codfishes feed chiefly, if not exclusively, on herrings.

In 1879 rather more than 5,000,000 cod, ling, and hake, were taken by the Scottish fishermen. Allowing each only two herrings a day, these fishes would have consumed more than 3,500,000,000 of herrings in a year. As to the Norwegian fisheries, 20,000,000 codfishes are said to be taken annually by the Loffoden fishermen alone.

remarkable is that furnished by the fisheries of Bohuslan, a province which lies on the southwestern shore of the Scandinavian peninsula. Here a variety known as the "old" or "great" herring, after being so extremely abundant, for about sixty years, as to give rise to a great industry, disappeared in the year 1808, as suddenly as they made their appearance, and have not since been seen in any number.

The desertion of their ordinary grounds by the herring has been attributed to all imaginable causes, from fishing on a Sunday to the offense caused to the fish by the decomposing carcasses of their brethren, dropped upon the bottom out of the nets. The truth is, that absolutely nothing is known on the subject, and that little is likely to be known until careful and long-continued meteorological and zoological observations have furnished definite information respecting the changes which take place in the temperature of the sea, and the distribution of the pelagic crustacea which constitute the chief food of the herring-shoals. The institution of systematic observations of this kind is an object of international importance, toward the attainment of which the British, Scandinavian, Dutch, and French Governments might wisely make a combined effort.

A great fuss has been made about trawlers working over the spawning-grounds of the herring. "It stands to reason", we were told, that they must destroy an immense quantity of the spawn. Indeed, this looked so reasonable that we inquired very particularly into a case of the alleged malpractice which was complained of on the east coast of Scotland, near Pittenweem. Off this place there is a famous spawning-ground known as the Traith hole, and we were told that the trawlers worked vigorously over the spot immediately after the herring had deposited their spawn. Of course our first proceeding was to ask the trawlers why they took the trouble of doing what looked like wanton mischief. And their answer was reasonable enough. It was to catch the prodigious abundance of flat-fish which were to be found on the Traith at that time. Well, then, why did the flat-fish congregate there? Simply to feed on herring-eggs, which seem to be a sort of flat-fishes' caviare. The stomachs of the flat-fish brought up by the trawl were, in fact, crammed with masses of herring-eggs.

Thus every flat-fish caught by the trawl was an energetic destroyer of herring arrested in his career. And the trawling, instead of injuring the herring, captured and removed hosts of their worst enemies. That is how "it stood to reason" when one got to the bottom of the matter.

I do not think that any one who looks carefully into the subject will arrive at any other conclusion than that reached by my colleagues and myself; namely, that the best thing for governments to do in relation to the herring-fisheries is, to let them alone, except in so far as the police of the sea is concerned. With this proviso, let people fish how they like, as they like, and when they like. At present I must repeat the conviction we expressed so many years ago, that there is not a particle of evidence that anything man does has an appreciable influence on the stock of herrings. It will be time to meddle when any satisfactory evidence that mischief is being done is produced.—Nature.

**EXTRACT FROM INAUGURAL ADDRESS OF PROFESSOR HUXLEY,
F. R. S., AT THE INTERNATIONAL FISHERIES EXHIBITION, LON-
DON, 1883.[^a]**

And now arises the question, Does the same reasoning apply to the sea fisheries? Are there any sea fisheries which are exhaustible, and, if so, are the circumstances of the case such that they can be efficiently protected? I believe that it may be affirmed with confidence that, in relation to our present modes of fishing, a number of the most important sea fisheries, such as the cod fishery, the herring fishery, and the mackerel fishery, are inexhaustible. And I base this conviction on two grounds, first, that the multitude of these fishes is so inconceivably great that the number we catch is relatively insignificant; and, secondly, that the magnitude of the destructive agencies at work upon them is so prodigious, that the destruction effected by the fisherman cannot sensibly increase the death-rate.

At the great cod-fishery of the Lofoden Islands, the fish approach the shore in the form of what the natives call "cod mountains"—vast shoals of densely-packed fish, 120 to 180 feet in vertical thickness. The cod are so close together that Professor Sars tells us "the fishermen, who use lines, can notice how the weight, before it reaches the bottom, is constantly knocking against the fish." And these shoals keep coming in one after another for two months, all along the coast.

A shoal of codfish of this kind, a square mile in superficial extent, must contain, at the very least, 120,000,000 fish.^b But it is an exceptionally good season if the Lofoden fishermen take 30,000,000 cod; and not more than 70,000,000 or 80,000,000 are taken by all the Norwegian fisheries put together. So that one fair shoal of all that approach the coast in the season must be enough to supply the whole of the codfish taken by the Norwegian fisheries, and leave a balance of 40,000,000 or 50,000,000 over.

The principal food of adult cod appears to be herring. If we allow only one herring to each codfish per diem, the cod in a square mile of shoal will consume 840,000,000 herring in a week. But all the Norwegian fisheries put together do not catch more than half the number of herring. Facts of this kind seem to me to justify the belief that the take of all the cod- and herring-fisheries, put together, does not amount to 5 per cent. of the total number of the fish. But the mortality from other sources is enormous. From the time the fish are hatched, they are attacked by other marine animals. The great shoals are attended by hosts of dog-fish, pollack, cetaceans and birds, which prey upon them day and night, and cause a destruction infinitely greater than that which can be effected by the imperfect and intermittent operations of man.

I believe, then, that the cod fishery, the herring fishery, the pilchard fishery, the mackerel fishery, and probably all the great sea fisheries, are inexhaustible; that is to say, that nothing we do seriously affects the number of the fish. And any attempt to regulate these fisheries seems consequently, from the nature of the case, to be useless.

^a Published by William Clowes and Sons, London, 1883.

^b This allows over four feet in length for each fish, and a yard between it and those above, below, and at the sides.

EXTRACT FROM "THE FISHERY LAWS," BY FREDERICK POLLOCK,
ISSUED BY THE INTERNATIONAL FISHERIES EXHIBITION,
LONDON, 1883.[^a]

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In 1843 a Convention was made between England and France for the establishment of a common set of fishery rules on the coasts of either country; the purpose being not so much the preservation of sea-fish as the prevention of strife between fishermen of the two nations, and avoidance of difficulties about jurisdiction. In 1868 a new Convention was made intended to supersede the former one; and being confirmed by Parliament^b and gazetted as the Act provided, it became, and it is at present, the law governing British fishermen in British waters. But it was never ratified by the French Legislature, so that in French waters the old Convention of 1843 is still in force; and French fishermen cannot be proceeded against except under that Convention for offences against the fishery police of our coasts.^c

Under the Act of 1868 all British fishing boats have to be lettered, numbered, and registered. The letters indicate a port or station having a separate collectorship of customs, and every station has its own set of numbers. The details are worked out by an Order in Council of June 18, 1869. By supplementary regulations of February 26, 1880, open boats not going out beyond the three-mile limit are exempt. Naval and revenue officers and the coastguard have by the Act and Orders in Council large powers of search and seizure, and the fines for not having the name, number, &c., duly painted on a boat may amount to £20.

The Convention lays down a number of rules (which it is impossible to abridge) as to fishing-vessels carrying lights,^d not interfering with one another's operations, and abstaining, except in certain cases of necessity, from entering the French fishery limits.

In 1881-2 an International Conference was held at the Hague to discuss proposals for establishing a joint fishery police in the North Sea. The result was a Convention signed on May 6, 1882, by the delegates of England, Germany, Belgium, Denmark, France and the Netherlands (power being reserved for Sweden and Norway to come in). It contains rules as to lettering, numbering, and official papers; as to the duty of boats not to interfere with each other's fishing, with a special prohibition of "any instrument or engine which serves only to cut or destroy nets;"^e and as to the manner in which the Convention is to be carried out, and the superintendence of the fisheries exercised, by the cruisers of the several contracting Powers. This Convention has not yet acquired legal force as regards

^a Published by William Clowes and Sons, London, 1883.

^b 31 & 32 Vict. c. 45.

^c See 40 & 41 Vict. c. 42, s. 15.

^d The rule as to lights was made more specific in 1879 by an Order in Council (Regulations for preventing Collisions at Sea) under the Merchant Shipping Acts. Since September 1, 1881, till which date the operation of the Order was afterwards suspended, fishing-vessels out with drift-nets ought to carry two red lights on the mast, and trawlers a red and a green light. I doubt whether the rule is much observed in practices.

^e Such an instrument, known as the "devil," has been used by Belgian sailors and fishermen to the great grievance of the fishermen of other nations. Its use, sale, and manufacture are now prohibited by a Belgian law of March 27, 1882.

British fishermen; but it is understood that a Bill to confirm it will be introduced in the present session of Parliament. Whenever the North Sea Convention takes effect, the present anomalous relations between England and France as to the Channel fisheries will have to be reconsidered. It will be remembered that British fishermen are under one law and French under another; and an additional complication may be introduced by the limits of the new Convention, to which France is a party, overlapping those of the old ones at some points. This seems not unlikely to lead to total abrogation of the former Conventions, and the adoption, as between England and France, of the North Sea Convention (with whatever not inconsistent additions the local circumstances may require) for the Channel fisheries also.

The Treaty of Washington, made in 1871 between England and the United States, contained articles (afterwards confirmed by Parliament^a giving American fishermen the right of sea-fishing and landing nets and fish on the Canadian coast, and the like right to British fishermen on the east coast of the United States above 39° N. lat. There are no detailed regulations or police provisions of any kind.

EXTRACT FROM "THE FISHERIES OF CANADA," BY L. Z. JONCAS, READ AT THE INTERNATIONAL FISHERIES EXHIBITION, LONDON, 1883. [b]

The fisheries of Canada can be divided into two great classes; the sea fisheries, and the fresh water, or lake and river fisheries.

The former are subdivided into the cod fishery, the herring fishery, the mackerel fishery, the lobster fishery, and the seal fishery. The latter comprises the salmon and trout fisheries, the white fish fisheries, etc.

The sea fisheries are carried on especially in what we call the maritime provinces, namely: Nova Scotia, Quebec, New Brunswick, and Prince Edward Island, whilst the provinces of Ontario, Manitoba, and British Columbia are celebrated for their inland fisheries.

In the river and gulf of St. Lawrence alone, Canada possesses more than nine hundred miles of coast, along which are to be found, at different seasons of the year, a greater abundance and variety of fish than in any other part of America.

The shoals of cod-fish, mackerel, herring, etc., which approach our shores for purposes connected with the reproduction of their species are immense, and, I was going to say, inexhaustible.

Of all the fish named above, the cod, the mackerel, the herring, and the lobster, have especially attracted the attention of the fishermen of Canada.

The cod fishery being the most important and the most valuable, the one that gives occupation to the greatest number of men, employs the greatest number of vessels, and produces, commercially speaking, the most advantageous results, I will give it the precedence over the others.

^a 35 & 36 Vict. c. 45. The Act seems to have been required only for the purpose of repealing earlier inconsistent statutes.

[^b Published by William Clowes and Sons, London, 1883.]

I will direct your attention to the modes of catching and of curing that fish, its yearly value for the Dominion, and the different markets we send it to. The haddock (*Morrhua aeglefinus*) and the hake (*Phycis Americanus*) being taken in the same waters, caught by the same means, and cured the same way as the cod-fish, will be comprised under the title of cod fishery.

The cod is so well-known everywhere that I may dispense with giving any description of it. Let it suffice to say that there are several kinds, of which the only one of any consequence to Canada is the common cod (*Gadus Morrhua*) which is found along the coast of the Gulf of St. Lawrence.

Speaking of the habits of the cod-fish I cannot do better than to quote here the words of the Honourable Dr. P. Fortin, M. P., now representative of the county of Gaspé, in the House of Commons of Canada, who has been for years commander of the armed schooner "La Canadienne" employed in the protection of our fisheries, and who is considered an authority in this matter. "The cod inhabits cold and temperate climates. It is found along the coasts of Greenland, Labrador, Newfoundland, Nova Scotia, and the United States. Everybody has heard of the great banks of Newfoundland and of the immense quantity of fish to be found there."

"It abounds on the coasts of Iceland and Norway, visits the coasts of Scotland, England, and Ireland, and is also taken on the coast of France. But it does not appear to go beyond the latitude of Gibraltar, and has not, that I am aware of, been seen in the Mediterranean."

The cod generally stays in the sea at a depth of from twenty to sixty fathoms, but when the instinct of reproduction is felt it approaches the shores, in pursuit of the caplin, of which it then makes its chief food, and remains six or eight weeks in twelve, eight, and even five fathoms of water. It is then that the taking of this fish can be, and is, most successfully carried on."

"The cod appears on the Canadian coast at uncertain dates, generally between the 10th of May and the 1st of June, though in many instances it has made its appearance in the latter end of the month of April. It has some favourite spots where it is found in greater quantities. These are the places which present the best advantages for the preservation and hatching of the spawn."

"Having deposited its spawn the cod withdraws to the shallow places called banks, where it finds always food in sufficient quantity to satisfy the well-known voracity of its appetite."

Formerly cod were found in great quantities and taken in abundance from Rimouski to St. Anne des Monts in the river St. Lawrence, and as far as New Richmond and even Carleton in the upper part of "La Baie des Chaleurs," but it has now almost entirely disappeared from those places, and fishing in them had to be given up.

About the 15th of December cod-fish appear to leave shallow soundings and the inshore banks, and go farther out to sea.

The season for cod-fishing varies with the different provinces. In Quebec and Nova Scotia it is generally from April to November.

The cod-fishery is carried on in Canada either in vessels of a tonnage of from 60 to 100 tons, or in open boats similar to those that are now exhibited in the Canadian Court.

The fishing in large vessels is carried on principally by the fishermen of Nova Scotia.

Vessels employed in cod fishery are manned by from ten to thirteen men, according to their tonnage. Generally the owner of the schooner, who also supplies the men with all the necessary fishing tackle, receives half of the fish which is caught, the fishermen retaining the other half.

"When the vessels have reached the fishing grounds they are anchored, by hemp or manilla cables, in from fifteen to fifty fathoms of water. Bait is obtained by spreading nets in the sea at some distance from the vessel, and the fishing is then begun with long lines, and carried on, by night as well as by day, in spite of wind and storm, until the hold of the vessel is filled with fish all split and salted. Then the vessel returns to port, the cod is landed, washed, dried and prepared for exportation" (Dr Fortin).

In the province of Quebec fishermen carry on the cod fishery in open boats, some of them near the coasts in the neighbourhood of the coves and bays where they reside, and some on the banks twenty or thirty miles from the shore.

Those among the fishermen who have the means of doing it, build their own boats, buy their fishing tackles, and have the advantage either of selling their fish fresh in the local markets, or of curing it and getting a better price when it is dried from the speculators who, in the fall, visit every locality along the coast of the Gulf of St. Lawrence, for the purpose of buying cod-fish.

The fisherman who has no boat of his own goes to the capitalist who is engaged in the fishing business. This capitalist furnishes him with a boat all equipped and ready to go to sea, for the sum of five or seven pounds for the fishing season, with the express and written condition that all the fish caught by the fisherman in this boat will be sold to the merchant who furnishes the boat. The boats vary in dimensions, and are from eighteen to thirty feet keel, and their breadth of beam from six to ten feet. They are very sheer built, and the clinker work is usually of cedar. They are built like whale-boats, that is to say, they are pointed at the stem as well as the stern. Their rigging consists generally of two sprit-sails or gaff-sails; some of those used to fish on the Miscou and other banks are schooner-rigged. They are built by the fishermen themselves, are good sailers, and behave wonderfully well at sea, especially those from Gaspé and Cape Breton.

"The inshore fishing is carried on with hand lines, and the fishermen always set out for the fishing grounds at two or three o'clock in the morning. On arriving at the place where they expect to find fish they cast anchor; then they bait their hooks with fresh fish and drop their lines into the water, each with a leaden sinker attached to it, weighing from two to four pounds according to the depth of the water and the force of the current."

"Each of the two fishermen who man each boat has two lines when fishing in thirty or forty fathoms of water. When the fishing is in ten fathoms, or less, they use four lines each. If there are plenty of fish, as it is often the case in the spring, the fisherman has not a moment's rest, when once he has begun; for while he is hauling up one line the other is going down and before he has unhooked one fish from the former another fish is fast to the latter. The lines are always furnished with two hooks and often-times they come up with a fish on each hook; the fishermen calls this "taking a pair."

"Sometimes there is no good fishing at the first anchorage; in that case the anchor is weighed and the boat is sailed away in search of a better place. When the fish is plentiful it is not an uncommon case to see the boats coming ashore in the afternoon with 2000 pounds of fish, that is 1000 for each man."

"The fishermen generally remain on the fishing grounds until four or five o'clock in the afternoon, after which they hasten ashore in order that the cod they bring may be split and salted immediately, before it has time to heat or soften" (Dr. Fortin).

The bank fishing is made with long lines which our fishermen call "Norman lines." These lines consist of a long and strong line of from 600 to 1200 fathoms with hooks fastened along its whole length at regular distances by shorter and smaller lines, called snoods. The snoods are three feet long and are placed on the long line six feet apart to prevent the hooks becoming entangled. At each end of the long line is an anchor, a buoy line and a buoy, and the line is always laid across the tide; for if the tide runs upon the end of the line, the hooks will become entangled and the fishing would be totally lost.

On getting to the bank or fishing-ground, the hooks being previously baited and the line neatly coiled in tubs, clear for running out, one of the two fishermen who are manning the boat sinks the line whilst the other is steering the boat.

The line remains in the water from six to eight hours, according to the time when sunk and also to other circumstances, after which time it is hauled in. In certain seasons of the year, especially in the month of September, two fishermen in a few hours, with a line of 800 fathoms, will take five or six thousand pounds of fish.

From the 15th of June to the 15th of October, two men carrying on the bank fishing actively can easily take 600 quintals of cod-fish. The average quantity caught by each boat is about 400 quintals, each quintal being worth six shillings in the local markets.

"The months of June, July and August are the most favourable for the cod fishery; not only because during that period, the air is frequently calm, there are long spells of fine weather, and storms are more rare than at any other time during the season, but also because it is then that the cod-fish resorts more to the coast either to spawn or in pursuit of the caplin or sable launce, on which it feeds, and because these fish, which serve as bait, are then more abundant and easier to take; for it must be remembered that there is no good fishing without fresh bait. The cod is not at all partial to salt-fish, and it is only on the great banks where the cod feeds chiefly on crustacea and mollusca that it bites at a line baited with salt herring or salt caplin."

"It is therefore most essential for the fishermen to be always provided with fresh fish for bait, and they accordingly have herring, caplin and launce seines which they make use of every morning and every evening, to provide themselves with a sufficient quantity of little fish for the day" (Dr. Fortin).

On every large fishing establishment, from the end of May to the beginning of August two or three boats, each of them manned by seven men called seiners, are employed day and night in going about the coast in search of the caplin, herring and launce. Sometimes they have to go 20 and 25 miles from the establishment. When they meet with a shoal of these fish, they cast the seine, load their

boat and hasten home to distribute these little fish amongst the fishermen belonging to the same establishment. Each cod-fishing boat receives an equal share of the fish thus brought by the seiner.

When the caplin and sand launce have disappeared from the coast, or do not come near enough to the beach to be taken by the seine, the fishermen have to go out every evening and take herring and mackerel in drift-nets; or squid and other fish with hooks and lines.

Late in the fall, the only fish that can be taken for bait is the smelt.

The fishing from the beginning of the season to the fifteenth of August is called the summer-fishing; what is carried on after that date is called the autumn-fishing. All the cod taken until the end of September is salted and dried to be exported to foreign countries; what is taken from the first of October to the end of the fishing season is salted and packed in barrels and sent to the local markets.

* * * * *

The sea fishery next in importance to the cod fishery in Canada is the

HERRING FISHERY,

the value of which, according to our last statistics, was 1,721,822 dollars.

The herring arrives in the Canadian waters early in the spring, and as soon as the ice has disappeared from our coasts. From the month of April to the month of December it is seen in immense shoals on the Atlantic Coast of Nova Scotia, in the Gulf of St. Lawrence, in the Gulf of Canso, in the numerous coves and bays formed by the Magdalen Islands, and in the Baie des Chaleurs.

In winter it disappears from our northern coasts, though a considerable quantity is taken during that time along the southern coast of New Brunswick.

In many of our bays, in the spring, the herring sometimes appear in such dense shoals near the shore, that the pressure upon each other, increased by the force of the tide, kills them by thousands.

"It is impossible without seeing," writes Dr. Fortin, "to form a correct idea of the prodigious abundance of the ova of the herring deposited on all the coast where the herring spawns. I have seen, in many instances, the shore covered two or three feet deep with them for several miles. This will, perhaps, appear astonishing to some persons; but they will soon recover from their astonishment when they reflect upon the fact that the female herring has from six to eight millions of ova in its ovaries.

"Providence has no doubt ordained that there should be this prodigious quantity of ova, in order that there should remain enough for the preservation of the species in the numerical proportion required by the Creator, notwithstanding a loss of a great portion of them which are washed on shore by the waves, or are devoured by the little fishes.

"As might naturally be expected, the appearance of the herring along our coast does not fail to engage the attention of our fishermen, for whom its capture is a highly profitable employment.

"No sooner in the spring has the first shoal of herrings been observed at any place along the coast, than all the fishermen in the neighbourhood repair to the beach with their nets, their lines, and all

their other fishing tackle. Soon a great number of boats are plying in every direction about the bays and coves where the fish are expected. These boats contain the fishermen who go to spread their nets so as to intercept the shoals of herring, when seeking to approach the shore at night for the purpose of spawning.

"The nets used by our fishermen are generally thirty fathoms long by five or six wide."

They are set in the evening, and in the morning early the fishermen visit them, take out the fish, and if necessary take the net ashore to clean it. Generally, in the spring, when the fishing is good, each net will take from five to ten barrels of fish during one night.

But there is a much more expeditious mode of taking herrings than with nets, and that is with seines. Seines for this purpose must be of large dimensions, say from one hundred to one hundred and fifty fathoms long, by from eight to eleven fathoms wide, with braces of two hundred fathoms long. These seines are expensive and require many hands to work them, so that it is not every fisherman that can have one. There are also the purse seines which are used to fish the herrings on the banks, sometimes twenty and thirty miles from the shore.

Seine-fishing for herrings is chiefly carried on by fishermen of Nova Scotia, in schooners of the same tonnage as those employed in the cod fishery.

Those who fish with nets, when once they have set them in places where they think the greater number of fish will pass, wait for the fish to come in and get entangled. Those who fish with seines, on the contrary, go out in search of the fish along the coasts they expect them to approach, with the seine in a large boat, manned by eight men. A score of seamen, in smaller boats, precede and follow the seine boat and look out in every direction for signs of the presence of shoals of herrings. If the surface of the water is agitated at any particular spot, they immediately proceed there. Their cruises are frequently unsuccessful. Sometimes they row for whole days without seeing a single fish; but they have also their strokes of good fortune, and fishermen with seines of large dimensions often take at a single haul of the seine herrings enough to fill 500, 1000, 2000 or even 3000 barrels. One need not be surprised at such great results when one reflects that herrings in a shoal are so crowded together as to almost form a compact mass from the surface of the water to the bottom.

When the seine is so much loaded with fish it cannot be hauled on shore without risk of breaking it and losing the riches it contains, the braces are made fast on shore and the fishermen seine with small seines inside of the large one; or if the fish are very thick, they are taken out with scoop nets or landing nets.

If the weather is calm or the wind off the land, the seine may be left moored in this way for several days or until all the fish have been taken out of it, but if, unfortunately, a sea breeze springs up and it begins to blow hard, the seine must be taken up at once or it will be torn to pieces by the violence of the waves. Many thousands of barrels of fish are lost in this way.

Herrings are salted either round or split and packed in barrels, containing 200 pounds, to be sent to the United States and West Indies markets. Only a small quantity is sent to the English markets.

They are of different qualities; those caught from August to October being far superior to the spring herring, and the best of all being the celebrated and well known "Labrador herrings."

MACKEREL FISHERY.

The mackerel is one of the most valuable of all the fish that visits the Canadian coast. Unfortunately, it is only these last years that this fish has been appreciated at its real value by the Canadian fishermen.

During many years the important mackerel fishery in the Gulf St. Lawrence was almost entirely left in the hands of our American neighbours.

Even now, I am sorry to say, there is not in the whole province of Quebec, where this fish is in great abundance, one single schooner specially employed in this fishery. The fishermen of this province generally contenting themselves with taking mackerel for home consumption, or for bait for the cod-fishery.

The fishermen of Nova Scotia, New Brunswick and Prince Edward Island understand their interests better, and they have, every season, prosecuting the mackerel fishery, a fleet of fine vessels, so improved in symmetry as to bear fair comparison with the American mackerel schooners, which are reputed to be the finest vessels, and the best sailors of their class in the world.

These schooners are usually of from 60 to 100 tons. They have little depth of hold, great breadth of beam, take very much fore and aft, and carry large cotton sails, which enable them to sail fast, even with a light breeze. They are met with everywhere in the southern part of the Gulf St. Lawrence, during the months of July, August and September; and from a distance look more like a small squadron of yachts than a fleet of fishing vessels, so beautiful are their masts and sails, and so neat and clean are they kept.

But on a nearer approach this is found to be an error, for on the decks of these vessels are to be seen crews of ten or twenty men all occupied either in catching fish, in repairing fishing implements, or in splitting and salting the fish that have been taken; and what is more striking is the order that reigns on board of these schooners.

The mackerel fishing is carried on in two ways, with the seine and with hooks and lines.

The mode of seining I have already described in speaking of the herring fishery. Dr. Fortin will tell us how the hook and line fishing is done.

"Before sailing from their port of outfit for the Gulf St. Lawrence, the fishermen provide themselves with several barrels of very fat little fish called "poggies," to serve as bait and as food for the purposes of attracting the mackerel to the surface of the water. At a later period, when the "poggies" are exhausted, recourse is had to the offal of the mackerel for bait, and it is prepared in this way:—whole fishes or the offal of fishes, either "poggies," mackerel or others, are chopped up very fine in a machine something like a straw cutter, and then put into a large bucket full of salt water; the mixture is then stirred for a long time with a small paddle.

"As soon as the schooners have reached the places where shoals of mackerel are to be found, they keep cruising backwards and for-

wards, and the moment there is the least appearance of fish near a vessel, the jibs are taken in and the vessel is brought to with the mizen sail and main sail veered half round. Feed is then scattered all around, the fishermen seize their lines, bait their hooks with small pieces of the skin of the neck of the mackerel or any other fish and throw them into the water. The lines are fine and made up of hemp or cotton, generally the latter; they are from six to eight fathoms long and to the end is fastened a small sinker of polished pewter, oblong in shape and weighing about two ounces, to one end of which is soldered a middle sized hook." (Dr. Fortin.)

Each fisherman plies two lines, one in each hand and leans on the rail of the schooner while fishing. He very seldom pays out more than four or five fathoms of line, for the mackerel attracted by the chopped fish thrown overboard, rise to the surface.

From fifty to thirty barrels of mackerel may be taken in six hours by a crew of fifteen men.

The mackerel fishery is difficult and therefore requires to be carried on with sagacity and perseverance, but it is generally successful, brings in large profits, and is certainly worthy of the attention of capitalists.

Like the herrings, the mackerel are salted, and packed into barrels of 200 pounds and sent to the English, United States of America, and West Indies markets. Some are preserved in cans and some are also sent to the markets in a fresh state.

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EXTRACTS FROM "NEWFOUNDLAND AND CANADIAN LIGHTS AND FOG SIGNALS ON THE COASTS OF NEWFOUNDLAND AND LABRADOR." ^a

Newfoundland Lights.

Name of Place.	Latitude North.	Longitude West.	Date of Lighting.	Description of Light.	Height above Sea level.	Dist. visible in Naut. miles.
	° ' "	° ' "			Ft.	M.
Gull Island (Cape John).	49 59 54	55 21 33	1884	Intermittent White, 4th order dioptric, making one complete revolution in one minute, appearing about 11 seconds light and 9 seconds dark.	525	26
Nipper's Harbor Island, N. D. Bay.	49 47 00	55 49 00	1901	Fixed Red, 4th order. Shows white between the island and mainland.	111	12
Little Bay Isl'd.	49 38 20	55 46 00	1908	Occulting White, showing alternately equal periods of 2½ seconds light, and 2½ seconds dark. The light is dioptric, of the 6th order.	77½	10
Southern end of Long Island, N. D. Bay.	49 36 00	55 34 00	1904	Fixed White, 4th order dioptric.....	103½	15
Great Denier Island, N. D. Bay.	49 31 35	55 32 30	1895	Fixed Red, dioptric.....	.....	8
Leading Tickles, N. D. Bay.	49 30 30	55 24 00	1908	Occulting White, showing alternately 7 seconds light, and 3 seconds dark. The light is dioptric, of the 6th order.	83	10
Fortune Harbor, N. D. Bay.	49 32 10	55 14 00	1908	Fixed White, dioptric, of the 6th order.	114	11

^a Published by Newfoundland Minister of Marine and Fisheries at St. Johns, December, 1909.

Newfoundland Lights—Continued.

Name of Place.	Latitude North.	Longitude West.	Date of Lighting.	Description of Light.	Height above Sea level.	Dist. visible in Naut. miles.
					Ft.	M.
Exploits Harbor.....	• • "	• • "	1907	Three Spar Buoys moored to show the deep water channel. Entering the harbor keep the red buoy on the starboard hand, and two black ones on the port hand.		
St. Michael's Head (S. side of entrance to Burnt Bay, Bay of Exploits).	49 17 00	54 58 00	1904	Fixed White lens lantern light.....		
Black Island (Eastern entrance to Bay of Exploits).	49 33 50	54 58 00	1908	A mark consisting of an upright, surmounted by a half circle, spherical side uppermost, painted white, indicates position of the pilot's station.		
Long Point (Toulinguet).	49 41 00	54 49 00	1876	Revolving White, catoptric, attains greatest brilliancy every 30 seconds.	331	21
Wharf Light (Toulinguet).	49 39 40	54 45 50	1885	Fixed red light, shown from an octagonal wood tower on outer end of Public Wharf. Painted red and white horizontal bands, two of each. Light exhibited during period of open navigation, annually.		
Herring Neck.....	49 39 00	54 35 00	1909	Fixed White, dioptric of the 6th order.	93½	12
Bacalhao.....	49 41 30	54 33 08	1894	Occulting White; 1½ seconds light and dark.	357	21
Fogo Harbor, Rag's Island.	49 43 45	54 15 50	1908	Fixed White, lens lantern hoisted to open framework, on the Port hand of the Eastern channel entering Fogo.	82	8
Change Island, South end, Stag Hr. Run.	49 34 30	54 24 10	1901	Fixed Red, visible in Stag Harbor Run, except where obscured by projecting land.	43	.....
Stag Harbor Tickle (off South Point).	49 33 30	54 16 50	1905	Spar Buoy, White, moored in 3 fathoms, indicates position of Stag Rock off the south point Stag Harbor Tickle. Removed on approach of ice.		
Stag Har. Run.....			1908	An Iron Nun Buoy, moored on the southern side, painted red; and two on the northern side, painted black. The passage between carries the greatest depth of water. Removed not later than Jan. 1 in each year.		
Burnt Point, Seldom-Come-By.	49 36 00	54 09 00	1905	FOG ALARM: Sounded during thick or foggy weather, giving blasts of 5 seconds, silent 11½ seconds. Fixed Red lens lantern light on southern side of fog alarm buildings. Fog alarm and light are operated from opening of navigation in spring till close in December.	25	3
Cann Island, Seldom-Come-By.	49 25 05	54 10 35	1874	Fixed White, 8th order dioptric.....	85	10
Brooke's Point and Joe Batt's Arm (¾ mile W. N. W. from J. B. Point).	49 45 30	54 09 00	1905	Occulting White, 4th order dioptric, alternately 7 seconds light and 3 seconds dark.	97½	15
Tilton Harbor.....	49 42 30	54 03 30	1902	Fixed Red. In operation each year from June 1 to Dec. 15. Visible in all directions seaward, except in line with Pigeon Island. This light has been established for the small craft which visit Tilton Harbor during the fishing season.		
Offer Wadham Island...	49 35 35	53 45 12	1858	Revolving White, 4th order dioptric of 6 sides, flashes white every 30 seconds.	100	15
Penguin Island (9 miles S. W. mag. from Offer Wadham Island light).	49 26 55	53 48 00	1890	Fixed White, 4th order dioptric.....	62	9
Cabot Island, Bonavista Bay.	49 10 26	53 21 21	1880	Intermittent White, 4th order dioptric, appearing about 11 seconds light and 9 seconds dark.	74	10
Puffin Island, Greenspond.	49 03 37	53 32 37	1873	Fixed Red, 4th order dioptric, visible from N. by E. through S. to W. by N. mag.	85	10½

Newfoundland Lights—Continued.

Name of Place.	Latitude North.	Longitude West.	Date of Lighting.	Description of Light.	Height above Sea level.	Dist. visible in Naut. miles.
	° ' "	° ' "			Ft.	M.
Little Denier Island.....	48 41 05	53 34 40	1888	Revolving White, to give single flashes at intervals of 30 secs.	298	19
King's Cove Head.....	48 34 32	53 18 50	1893	Occulting White; 1½ secs. light and dark, alternately.	176½	14
Squarey Island (entrance to Bonavista).	48 39 00	53 07 40	1905	Fixed Red, 6th order dioptric; not constantly watched.	57	9
Cape Bonavista.....	48 42 01	53 04 35	1843	Revolving catoptric (6 Argand burners and reflectors), showing two white flashes followed by one red flash; each attaining its greatest brilliancy every 30 seconds.	150	15
Green Island, Catalina..	48 30 15	53 02 20	1857	Fixed White, 4th order dioptric, visible W. S. W. to N. E. Diaphone Fog Alarm, installed 1909, will give one blast during thick or foggy weather of five seconds duration in every 1½ seconds.	92	11
Fort Point, Trinity.....	48 22 00 (Approximate.)	53 21 00	1908	Occulting White, showing alternate periods of ¼ secs. light and 1¼ seconds dark.	75	10
Ragged Island.....	48 14 00	53 28 00	1910	Fixed Red, 4th order dioptric.....	118	16
Random Head, Trinity Bay.	48 05 30	53 33 00	1895	Occulting White, 6th order dioptric; alternate light and dark every 2 seconds.	126	13
Heart's Content.....	47 53 10	53 23 20	1901	Fixed Red.....	83½	12
Haut's Harbor, Trinity Bay.	48 01 07	53 15 07	1881	Fixed White, 6th order dioptric.....	65	9
Old Perlican.....			1910	To be constructed.		
Baccalieu Island.....	48 08 58	52 47 32	1859	Catoptric revolving white light, showing a flash every 20 secs. NOTE.—The light is often obscured by fog when the lower part of the island is clear.	443	24
Baccalieu Island Fog Alarm, S. W. Point.	48 06 20	52 48 10	1905	Diaphone Fog Alarm, sounded during thick or foggy weather, blast 5 seconds, silent 55 seconds. In operation annually from opening of navigation to close.	.....	.....
Western Bay Point, Conception Bay.	47 53 00	53 03 00	1901	Fixed Green lens lantern, hoisted to framework. FOG ALARM: Gun-cotton explosive; a 4-oz. cartridge exploded every 15 minutes. A ship's signal at sea answered by 2 explosions in quick succession. In operation during Navigation only.	.....	3
Carbonear Isl'd.....	47 44 24	53 09 22	1878	Fixed White, 6th order dioptric.....	165	12
Harbor Grace Island.....	47 42 45	53 08 11	1836	Occulting White. Equal periods of light and darkness, of two seconds.	151	15
Harbor Grace Har. Light.	47 41 29	53 12 33	1850	Fixed Red, 6th order dioptric.....	40	7½
Green Point, Bay Roberts.	47 36 40	53 10 15	1833	Fixed White, 6th order dioptric. Immediately beneath the principal white light is a projecting lantern, in which three lamps are placed; the two outer ones will show white, and center one in line with the Southern rocks N. E. ¼ E. (mag.) from the tower, will show red.	56	8½
Brigus, North Head.....	47 32 54	53 10 35	1885	Fixed Red, 6th order dioptric.....	113	12
Salmon Cove Point.....	47 27 50	53 08 40	1908	Occulting White, 6th order dioptric, showing 7 seconds light and 3 seconds dark; in operation during open navigation.	104	10
Cape St. Francis.....	47 48 30	52 46 50	1887	Fixed Red, 4th order dioptric. FOG ALARM: Siren Trumpet sounded 5 seconds, silent 5 seconds; sounded 5 seconds and silent 45 seconds in each minute.	123	12
Fort Amherst (entrance to St. John's).	47 33 47	52 40 20	1813	Fixed White, 4th order dioptric. Diaphone Fog Alarm: During thick or foggy weather, day and night, this diaphone will give ¾ seconds sound, followed by 66 seconds silence. N. B.—Cape Spear Fog Alarm ¾ miles distant from Fort Amherst, sounds one blast of 7 secs. in every half minute.	134½	12

Newfoundland Lights—Continued.

Name of Place.	Latitude North.	Longitude West.	Date of Light-ing.	Description of Light.	Height above Sea level.	Dist. visible in Naut. miles.
					Ft.	M.
St. John's Narrows, Cahill's Rock, Pancake Shoal and Ruby Rock.	.....	.....	1905	Spar Buoy, painted Black, showing position of Cahill's Rock; Spar Buoy, painted black, to indicate position of Pancake Shoal. Spar Buoy, painted red, to indicate position of Ruby Rock, near Chain Rock, on northern side of Narrows. Buoys will be removed without further notice when ice is on the coast.	.....	.....
St. John's—(1) Leading Lights.	.....	.....	.....	Catoptric Red. Keeping the lights or day marks, composed of three heart shapes, painted white, on the lower light, and the spire of the Congregational Church in line, will clear all danger.	.....	.....
St. John's (2) Leading Lights.	.....	.....	.....	Catoptric Red.....	79½	.....
Cape Spear.....	47 31 11	52 36 59	1835	Catoptric, Revolving White; greatest brilliancy every min. Fog Alarm: Compressed Air Trumpet, sounded 7 seconds; with intervals of silence 23 seconds.	264	22
			1910	Diaphone Fog Alarm to be installed in new building erected 140 yards S. S. W. from present Alarm building.		
Bay Bulls, Northern Head.	47 18 30	52 44 30	1908	Cylindrical iron light tower, 4th order dioptric white light. 7 seconds light, 3 seconds dark.	205	17
Ferryland Head.....	47 00 58	52 51 07	1871	Fixed White, 3rd order dioptric.....	200	16
Powell's Head, (entrance to Trepassy).	46 41 20	53 24 00	1902	Occulting White, 5th order, showing alternately light and darkness of one second.	101½	14
			1907	Fog Alarm:—A Diaphone will give blasts of 5 secs. duration, separated by silent periods of 112 secs.; thus: Blast, 5 secs.; silent, 112 secs.		
Cape Pine.....	46 47 04	53 31 45	1851	Fixed White, Catoptric. The intervening land being low the light can be seen over it from St. Mary's Bay.	314	25
Point La Haye, St. Mary's Bay.	46 54 20	53 36 40	1883	Fixed White, 6th order dioptric.....	62	9
Cape St. Mary's.....	46 49 34	54 11 43	1860	Revolving Cato-Dioptric, first order, showing alternately, a red and white light at intervals of one minute.	390	23
Point Verde, Placentia..	47 14 11	54 00 19	1876	Occulting White; showing 1 second dark, two seconds light, alternately.	98	11
Point Latine, Placentia.	47 18 40	53 59 40	1904	Fixed Red, 6th order dioptric.....	42	10
Marticot Island, Placentia Bay.	47 19 30	54 34 30	1909	Occulting White; 7 secs. light, 3 secs. dark.	93	18
Long Island, near Oderin, Placentia Bay.	47 17 40	54 42 00	1903	Fixed White, dioptric.....	273½	18
Iron Island, off entrance to Burin, Placentia Bay.	47 02 40	55 06 50	1904	Fixed Red Light, 6th order dioptric...	118	8
Dodding Head, Burin...	47 00 26	55 08 43	1856	2nd order Revolving White light (silvered reflectors and annular lenses), attains greatest brilliancy every minute. Owing to great height, this light is often obscured by fog when the coast is visible.	330	24
Allan Island, Lamaline..	46 51 00	55 47 40	1879	Fixed White, 8th order dioptric.....	64	9
Green Island, Eastern entrance to Fortune Bay.	46 52 30	56 05 00	1908	4th order Occulting White light, 2½ seconds light and dark, alternately.	137½	16
				Fog Alarm:—The Diaphone will be sounded during thick or foggy weather, giving blasts of 3 seconds duration every 90 seconds, thus: Blast, 3 secs. Silent, 87 secs. Blast, 3 secs. Silent, 87 secs.		
Brunette Island, Fortune Bay.	47 15 32	55 51 50	1825	Cato-Dioptric. Flashing white light, attains greatest brilliancy every 10 secs. Obscured by the land from E. S. E. to S.	408	23
Grand Bank, Fortune Bay.	47 08 00 Approx.	55 30	1890	Fixed Red, 6th order dioptric, Port Light.	28	5

Newfoundland Lights—Continued.

Name of Place.	Latitude North.	Longitude West.	Date of Lighting.	Description of Light.	Height above Sea level.	Dist. visible in Naut. miles.
	° ' "	° ' "			Ft.	M.
Garnish, Fortune Bay..	47 14 00	55 24 00	1885	Fixed Red, 6th order dioptric.....	20	5
Belleoram, Fortune Bay.	47 29 00	55 27 15	1873	Fixed White, 6th order dioptric.....	35	7
St. Jacques Island.....	47 28 00	55 24 30	1908	Occulting 4th order dioptric White light, 7 seconds light, 3 seconds dark.	131½	15
Rocky Point, Harbor Briton.	47 27 30	55 47 45	1873	Fixed White, 6th order dioptric. Not visible in a line with Harbor Rock.	68	9
Pass Island, entrance Hermitage Bay.	47 29 15	56 12 02	1870	Fixed White, 4th order dioptric..... A Fixed Red Light, 6th order dioptric, is placed below the White Light to distinguish the rocks and reefs extending from Wolf rocks, bearing (from lighthouse), S. 74, 47 W. to Basse Terre Point, S. 61° 33 E. The reef over the Wolf is about 1¼ miles from the island. At a distance of 4½ miles the two lights merge into one.	821 267	19
Gaultois.....	47 36 00	55 54 00	1885	Fixed White light, 6th order dioptric Port light, on an iron column. The light should be brought to bear N. E. before steering for the entrance of the harbor, to clear a sunken rock S. W. by West, about 100 yards distant.	14	.....
Ramea Island.....	47 30 30	57 24 35	1902	Occulting White; equal periods of light and darkness 1½ secs. Obscured by eastern head of Ramea Island.	125	16
Boar Island, Burgeo....	47 36 12	57 35 13	1874	Fixed Red, 4th order dioptric.....	207	11
Ireland Island, La Poile Bay.	47 37 52	58 22 13	1886	Fifth order Revolving White light, alternate flashes and total eclipse attaining greatest brilliancy every 12 secs.	67	9
Rose Blanche, Calne's Island, entrance to Rose Blanche Harbor.	47 36 00	58 41 55	1904	A Diaphone Fog Alarm, on the South Western end of Calne's Island at the entrance of Rose Blanche Har. Sounding 6 secs., silent 15 secs.; sound 6 seconds, silent 93 secs. A fixed Red light is shown from the roof of the Engine house.	.....	.....
Rose Blanche Point.....	47 35 48	58 41 30	1873	Fixed white, 4th order dioptric, showing all seaward.	95	11
Isle-aux-Morts.....	47 34 40	58 58 30	1902	Fixed Green, on Western end Pitman's Island.	26½	4
Channel Head, Port-aux-Basques,	47 33 49	59 07 09	1875	Changed 1909 to occulting white, visible 5 secs., eclipsed 5 secs.; visible 15 secs., eclipsed 5 secs. in every 30 seconds. Fog Alarm is a Diaphone, operated by compressed air, giving blasts of 3½ secs, followed by 114 secs. silence. Installed in a flat roofed white painted Engine house, built to the South end of the covered passageway. The Trumpet projects through the Southern end of this building.	101½	15
Port-aux-Basques Leading Lights: (1) Front Light,	.....	.....	.....	Occulting White, giving equal periods of light and darkness of 1½ seconds. Shown from a square pyramidal wooden tower (white) on S. W. point of Road Island Elevation 22½ feet. A fixed Red light (not visible from seaward) is shown from the North and Western sides of the lantern, for ships leaving the port.	.....	.....
Port-aux-Basques Leading Lights: (2) Rear Light,	.....	.....	.....	Occulting White, giving equal periods of light and darkness 1½ secs. Structure is like that on Road Island, and stands on the main land, 400 yds. distant therefrom, N. W. by N. ½ N., mag.; elevation 81 feet.	.....	.....
Port-aux-Basques Buoys,	.....	.....	.....	Port-aux-Basques. Buoys have been placed in the following positions: Western Baldwin Rock—A Spar Buoy, painted black, surmounted by a cone; Moored in 3½ fms. Eastern Baldwin—A Spar Buoy, painted	.....	.....

Newfoundland Lights—Continued.

Name of Place.	Latitude North.	Longitude West.	Date of Lighting.	Description of Light.	Height above Sea level.	Dist. visible in Naut. miles.
	° ' "	° ' "			Ft.	M.
Port-aux-Basques Buoys—Continued.				red. Moored in 3½ fms. Shoally lying between the Eastern Baldwin and Road Island—A Spar Buoy, painted white surmounted by an X. Moored in 3½ fms. Pancake Shoal—A Black Cask, moored in 2½ fms. These buoys are removed during winter months when drift ice is about.		
Sandy Point, Bay St. George.	48 27 27	58 29 10	1883	Occulting White, alternate periods of 1½ seconds light and dark.	35	9
Port-au-Port, Long Point.	48 47 30	58 46 00	1909	Occulting White, 4th order dioptric; 7 secs. light and 3 secs. dark.	48	11
Frenchman's Head, Bay of Islands.	49 03 45	58 09 35	1901	Fixed White, 4th order dioptric.....	160	.....
Lobster Cove Head, Bonne Bay.	49 36 09	57 56 51	1897	Occulting White, 5th order dioptric; 1½ seconds light and dark alternately.	115½	16
Cow Head.....	49 55 00	57 49 00	1909	Fixed White.....	141	15
Keppel Island, Port Saunders.	50 38 00	57 19 00	1901	Fixed White, 6th order dioptric.....	107½	14
Straits of Belle Isle, Red Bay.	51 43 00	56 25 00	1906	Fixed White Light is exhibited from a lens lantern, hoisted to an open framework, painted white, on western end of Saddle Island, and will be kept in operation during period of open navigation, or from June to end of December annually. Established as a Harbor Light only.		
Saint Mein Bay, St. Anthony Harbor, White Bay,	51 22 00 Approx.	55 33 00	1906	A Fixed White Light is exhibited from a lens lantern in the approach to St. Anthony Harbor, hoisted to an open framework painted white, and will be kept in operation during period of open navigation, or from June to end of December annually. Established as a Harbor Light only.		
Canada Bay, Aiguillettes or Inglee Harbor, White Bay,	50 43 30 Approx.	56 06 00	1906	In the approach to Inglee Har. Harbor Light only.		
Jackson's Arm, White Bay,	49 51 40	56 44 30	1906	On Southern extremity of Eastern Head. Harbor Light only.		
Western Cove, White Bay,	49 47 10	56 37 20	1906	On Northern Point of Cove. Harbor Light only.		
Seal Cove, White Bay..	49 56 00	56 22 30	1906	On the Northern extremity of Southern Arm Head, about 5½ cables West from Church Spire. Harbor Light only.		
Double Island, off Battle Har., Labrador Coast,	52 16 00	55 22 30	1905	Fixed Red, 4th order dioptric.....	126	12
White Point, N. entrance of Indian Tickle, Labrador Coast.	53 34 30	56 01 00	1905	Occulting White, alternate periods of 7 seconds light and 3 seconds dark.	72½	12
Cape North, Labrador..	53 46 00	56 26 00	1909	Fixed White, 4th order dioptric..... Station is furnished with International Signal Code Flags.	107½	15
Pack's Harbor, Labrador,	53 51 30	56 59 00	1909	Occulting White, 4th order dioptric, 2½ seconds light and 2½ seconds dark, alternately. Station is furnished with International Signal Code Flags.	108½	15
Cutthroat Point, Labrador,	54 29 00	57 06 00	1909	Fixed Red, 4th order dioptric..... Station is furnished with International Signal Code Flags.	92½	10

The following Lights on Newfoundland Territory are maintained by the Canadian government:

Name of Place.	Date of Light- ing.	Latitude North.	Longitude West.	Description of Light.	Height above Sea level.	Dist. visible in Nautical Miles.
		° ' "	° ' "		Ft.	M.
Cape Ray (Ice report Station).	1871	47 37 00	59 18 00	1st order Dioptric. Flashing white, group of 3 flashes every 15 secs., (flashes at intervals of 3 seconds, followed by an eclipse of 9 secs). Fog Alarm: A Diaphone, operated by compressed air; blast of five seconds every minute. Established 1872; changed 1906.	135	17
Cape Anguille.....	1908	47 53 51	59 24 36	3rd order Dioptric. Flashing white, flash 0.52 secs., eclipse 1.36 secs.; flash 0.52 secs., eclipse 7.60 secs.—In every 10 seconds. Fog Alarm: A Diaphone operated by compressed air, gives 2 blasts of 3½ secs. duration each every 90 seconds, thus: Blast 3½ secs., silent 5 secs.; blast 3½ secs., silent interval 78 secs.	115	16
Point Rich.....	1871	50 42 00	57 24 30	3rd order Dioptric. Flashing white, flash 0.25 secs., eclipse 0.75 secs.; flash 0.25 secs., eclipse 3.75 secs.—In every 5 secs.	96	15
Flower Island.....	1899	51 18 26	56 43 33	Catoptric. Revolving White light attains greatest brilliancy every 12 seconds.	51	12
Cape Norman.....	1871	51 38 07	55 54 06	3rd order Dioptric, Flashing White, group of 3 flashes every 30 secs., (flashes at intervals of 6 seconds, followed by an eclipse of 17½ seconds). Fog Alarm: Diaphone, operated by compressed air; blast of 7 secs. every 35 secs. Established 1884; changed 1907.	116	16
Cape Bauld.....	1884	51 38 50	55 25 03	2nd order Dioptric. Flashing white, flash 0.56 secs., eclipse 1.94 secs., flash 0.56 secs., eclipse 11.94 secs.—In every 15 min. Fog Alarm: Diaphone operated by compressed air. On the opening of navigation in 1910 the Fog Alarm at Cape Bauld will be changed so as to sound three blasts of 2½ seconds, with intervals of 3 seconds between them, every 45 seconds: Blast 2½ secs., silent 3 secs.; blast 2½ seconds, silent 3 seconds; blast 2½ secs., silent interval 31½ seconds. Established 1884; changed 1906.	154	18
Belle Isle (Depot of provisions for ship-wrecked mariners).	1859	51 52 52	55 21 55	First order Dioptric. Occulting White light, visible 5 seconds, eclipsed 5 seconds. Fog Alarm: 1st order double Siren operated by compressed air: midway between the upper and lower lights, 254 feet above the sea. The blasts of the Sirens are low and high notes alternately, each of 2½ secs. duration, separated by a silent interval of 2½ seconds in every two minutes, thus: Low note, 2½ secs.; Silent, 2½ secs.; High note, 2½ secs.; Silent interval, 112½ seconds. Established 1880; changed 1899.	470	28
Belle Isle, [Low Light].	1880	Below main light.	.....	2nd order Dioptric. Occulting White, visible 5 secs., eclipsed 5 seconds.	124	17
Belle Isle, North-east End.	1905	52 01 02	55 15 08	2nd order Dioptric, flashing White; flash, ½ second; eclipse, 10½ secs. Fog Alarm: Diaphone, operated by compressed air; blast of 3½ seconds every minute, Estab. 1906.	137	17

Name of Place.	Date of Light- ing.	Latitude North.	Longitude West.	Description of Light.	Height above Sea level.	Dist. visible in Nautical Miles.
Point Amour, [Forteau].	1855	° ' " 51 27 26	° ' " 56 50 28	2nd order Dioptric. Occulting White visible 16 secs.; eclipsed four seconds. Fog Alarm: Diaphone, operated by compressed air. On the opening of navigation in 1910 the Fog Alarm at Point Amour will be changed so as to sound three blasts of 2½ seconds, with intervals of 2½ secs. between them in each minute. The Fog Alarm Building is 106 feet S. by E. from lighthouse. Established 1875; changed 1906.	Ft. 152	M. 18
Greenly Island, [Blanc Sablon].	1878	51 22 26	57 09 52	2nd order Dioptric, flashing White; flash ½ second, eclipse 2½ seconds. Fog Alarm: Diaphone, operated by compressed air. On the opening of navigation in 1910 the Fog Alarm on Greenly Island will be changed so as to sound two blasts [long, short], with an interval of 2½ seconds between them, in each minute, thus: Blast 5 seconds, silent 2½ seconds; blast 2 secs., silent interval 50½ secs. Established 1878; changed 1906.	116	16
Cape Race.....	1856	46 39 24	53 04 20	Hyper Radial light, 1st order Dioptric, flashing White, one flash every 5 seconds. Fog Alarm: Diaphone, operated by compressed air; sounds blast of 5 seconds; interval 15 seconds; blast 5 seconds; then interval of 35 seconds. Established 1872; changed 1907.	165	19

NOTE—Belle Isle and Cape Ray Signal Stations.

MISCELLANEOUS CORRESPONDENCE, DOCUMENTS, ETC., OF THE
UNITED STATES.

Extracts from President Madison's message of June 1, 1812.

WASHINGTON, June 1, 1812.

To the Senate and House of Representatives of the United States:

* * * * *

Without going back beyond the renewal in 1803 of the war in which Great Britain is engaged, and omitting unrepaid wrongs of inferior magnitude, the conduct of her Government presents a series of acts hostile to the United States as an independent and neutral nation.

British cruisers have been in the continued practice of violating the American flag on the great highway of nations, and of seizing and carrying off persons sailing under it, not in the exercise of a belligerent right founded on the law of nations against an enemy, but of a municipal prerogative over British subjects. British jurisdiction is thus extended to neutral vessels in a situation where no laws can operate by the law of nations and the laws of the country to which the vessels belong, and a self-redress is assumed which, if British subjects were wrongfully detained and alone concerned, is that substitution of force for a resort to the responsible sovereign which falls within the definition of war. * * *

The practice, hence, is so far from affecting British subjects alone that, under the pretext of searching for these, thousands of American citizens, under the safeguard of public law and of their national flag, have been torn from their country and from everything dear to them; have been dragged on board ships of war of a foreign nation and exposed, under the severities of their discipline, to be exiled to the most distant and deadly climes, to risk their lives in the battles of their oppressors, and to be the melancholy instruments of taking away those of their own brethren.

Against this crying enormity, which Great Britain would be so prompt to avenge if committed against herself, the United States have in vain exhausted remonstrances and expostulations, and that no proof might be wanting of their conciliatory dispositions, and no pretext left for a continuance of the practice, the British Government was formally assured of the readiness of the United States to enter into arrangements such as could not be rejected if the recovery of British subjects were the real and sole object. The communication passed without effect.

British cruisers have been in the practice also of violating the rights and the peace of our coasts. They hover over and harass our entering and departing commerce. To the most insulting pretensions they have added the most lawless proceedings in our very harbors, and have wantonly spilt American blood within the sanctuary

of our territorial jurisdiction. The principles and rules enforced by that nation, when a neutral nation, against armed vessels of belligerents hovering near her coasts and disturbing her commerce are well known. When called on, nevertheless, by the United States to punish the greater offenses committed by her own vessels, her Government has bestowed on their commanders additional marks of honor and confidence.

* * * * *

We behold, in fine, on the side of Great Britain a state of war against the United States, and on the side of the United States a state of peace toward Great Britain.

Whether the United States shall continue passive under these progressive usurpations, and these accumulating wrongs, or, opposing force to force in defense of their national rights, shall commit a just cause into the hands of the Almighty Disposer of Events, avoiding all connections which might entangle it in the contest or view of other powers, and preserving a constant readiness to concur in an honorable reestablishment of peace and friendship, is a solemn question which the Constitution wisely confides to the legislative department of the Government. In recommending it to their early deliberations I am happy in the assurance that the decision will be worthy the enlightened and patriotic councils of a virtuous, a free, and a powerful nation

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JAMES MADISON.

Extract from the Works of John Adams, by C. F. Adams, pub. 1856.

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LETTER TO RICHARD RUSH.

QUINCY, 5 April, 1815.

Your two letters of the 27th ultimo have been received, with the inclosures, for all which I thank you.

You ask "some reflections of my own." My dear Sir, it would require a folio volume to give you the histories, dissertations, and discussions which you require. How can I, sans eyes, sans hands, sans memory, sans clerks, sans secretaries, sans aids-de-camp, sans amanuensis, undertake to write folios?

Let me ask you, Mr. Rush, is the sovereignty of this nation a gift? a grant? a concession? a conveyance? or a release and acquittance from Great Britain? Pause here and think. No! The people in 1774, by the right which nature and nature's God had given them, confiding in original right, and original power, in 1774 assumed powers of sovereignty. In 1775, they assumed greater power. In July 4th, 1776, they assumed absolute unlimited sovereignty in relation to other nations, in all cases whatsoever; no longer acknowledging any authority over them but that of God Almighty, and the laws of nature and of nations. The war from 4th of July, 1776, to 30th November, 1782, six years and some months, was only an appeal to Heaven in defence of our sovereignty. Heaven decided in our favor; and Britain was forced not to give, grant, concede, or release our independence, but to acknowledge it, in terms as clear as our language afforded, and under seal and under oath.

Now, Sir, they say that the late war has annihilated our treaty of 1782, and its definitive in 1783. Let me ask, has it annihilated our independence and our sovereignty? It has annihilated our sovereignty as effectually as it has any one particle of our rights and liberties in the fisheries. We asked not our independence as a grant, a gift, a concession from Great Britain. We demanded, insisted upon it as our right, derived from God, nature, and our own swords. The article in the treaty ought to have been, "The United States have been for seven years, now are, and of right ought to be free, sovereign, and independent States." But it was not thought necessary to hurt the delicacy of royal or popular feelings by language so emphatical, though so literally true.

Now, Sir, does not the article relative to the fisheries stand upon the same foundation with that of our independence? We claim and demand the fisheries in their utmost extent, from God and nature and our own swords, as we did our independence. And we will have them, God willing.

Neither nature nor art has partitioned the sea into empires, kingdoms, republics, or states. There are no dukedoms, earldoms, baronies, or knight's fees, no freeholds, pleasure grounds, ornamented or unornamented farms, gardens, parks, groves, or forests there, appropriated to nations or individuals, as there are upon land. Let Mahomet, and the Pope, and Great Britain say what they will, mankind will act the part of slaves and cowards, if they suffer any nation to usurp dominion over the ocean or any part of it. Neither the Mediterranean, the Baltic, the four seas, or the North Sea, are the *peculium* of any nation. The ocean and its treasures are the common property of all men, and we have a natural right to navigate the ocean and to fish in it, whenever and wherever we please. Upon this broad and deep and strong foundation do I build, and with this cogent and irresistible argument do I fortify our rights and liberties in the fisheries on the coasts as well as on the banks, namely, the gift and grant of God Almighty in his creation of man, and his land and water; and, with resignation only to the eternal counsels of his Providence, they never will and never shall be surrendered to any human authority or any thing but divine power.

You will accuse me of the bathos, if I descend from this height to any inferior ground; but the same rights from the same source may be deduced and illustrated through another channel.

2. We have a right—(I know not very well how to express it)—but we have the rights of British subjects. Not that we are now British subjects; not that we were British subjects at the treaty of 1783, but as having been British subjects, and entitled to all the rights, liberties, privileges, and immunities of British subjects, which we had possessed before the revolution, which we never had surrendered, forfeited, or relinquished, and which we never would relinquish any farther than in that treaty is expressed. Our right was clear and indubitable to fish in all places in the sea where British subjects had fished or ever had a right to fish.

3. We have a stronger and clearer right to all these fisheries in their largest extent than any Britons or Europeans ever had or could have, for they were all indebted to us and our ancestors for all these fisheries. We discovered them; we explored them; we settle the country, at our own expense, industry, and labor, without assistance

from Britain or from Europe. We possessed, occupied, exercised, and practised them from the beginning. We have done more towards exploring the best fishing grounds and stations, and all the harbors, bays, inlets, creeks, coasts, and shores, where fish were to be found, and had discovered by experiments the best means and methods of preserving, curing, drying, and perfecting the commodity, and done more towards perfecting the commerce in it, than all the Britons, and all the rest of Europe.

4. We conquered Cape Breton and Nova Scotia, dispossessed the French, both hostile and neutral, and did more, in proportion towards the conquest of Canada, than any other portion of the British empire; and would and could and should have done the whole, at an easier expense to ourselves, both of men and money, if the British government would have permitted that union of colonies, which we projected, planned, earnestly desired, and humbly petitioned. In short, we had done more, in proportion, towards protecting and defending all these fisheries against the French, than any other part of the British empire. For all these reasons, if there is a people under heaven who could advance a claim or a color of a pretension to any exclusive privileges in the fisheries, or any rights in one part of the old British empire more than another, that people are the inhabitants of the United States of America, especially of New England. But we set up no claims but those asserted and acknowledged in the treaty of 1783. These we do assert, and these we will have and maintain.

As you ask my opinion, it is that stipulations in acknowledgment of antecedent rights, in affirmance of maxims of equity and principles of natural and public law, if they are suspended during war, are revived in full force on the restoration of peace. Former treaties, not formally repeated in a new treaty, are presumed to be received and acknowledged. The fisheries are therefore ours, and the navigation of the Mississippi theirs, that is the British, as much as ever. I will answer any question you may ask.

Extract from "Writings of Albert Gallatin," by Henry Adams, pub. 1879.

* * * * *

Mr. Gallatin to J. Q. Adams.

No. 87.

PARIS, 6th November, 1818.

SIR,—Anxious from public considerations to return to Paris as soon as possible, I left London on the 22d ult. The convention had been signed on the 20th, and the time left to write our joint despatches was so short that, although I hope nothing material was omitted, it may be useful to add some further details and observations. On the subject of the fisheries, the abstract question of our right had been so ably discussed in your two notes to the British government that we had nothing to add to that branch of the argument. We could only, and we did it with some effect, demonstrate that, with respect at least to territorial rights, Great Britain herself had not heretofore considered them as abrogated by the mere fact of an intervening war.

Thus, Tobago, ceded by her to France by the treaty of 1783, taken during the ensuing war, and restored by the treaty of Amiens, had again been retaken by Great Britain during the last war. She was in actual possession when the treaty of 1814 took place, and if the treaties of 1783 and of Amiens were abrogated by the last war, the cession of that island by France had become null, and a retrocession was useless. Yet Great Britain did not reason in that manner, and did not consider her right good without a formal cession from France, which she accordingly obtained by the last Treaty of Paris. Thus, neither the treaty of 1763 generally, nor the cession of Canada to Great Britain particularly, having been renewed by the Treaty of Amiens, if the treaty of 1763 was abrogated by subsequent wars she now held Canada by right of possession only, and the original right of France had revived. We applied those principles to fisheries which, independent of the special circumstances of our treaty of peace of 1783, were always considered as partaking in their nature of territorial rights. It is, however, true, although it was not quoted against us, that it had been deemed necessary to renew in every subsequent treaty the right of fishing on part of the coast of Newfoundland originally reserved to the French. Although our arguments were not answered, it appeared to me that two considerations operated strongly against the admission of our right. That right of taking and drying fish in harbors within the exclusive jurisdiction of Great Britain, particularly on coasts now inhabited, was extremely obnoxious to her, and was considered as what the French civilians call a servitude. And personal pride seems also to have been deeply committed, not perhaps the less because the argument had not been very ably conducted on their part. I am satisfied that we could have obtained additional fishing ground in exchange of the words "forever." I am perfectly sensible of the motives which induced government to wish that the portion of fisheries preserved should be secured against the contingency of a future war. But it seems to me that no treaty stipulation can effectually provide for this. The fate of the fisheries in that case will depend on the result of the war. If they beat us (which God forbid), they will certainly try to deprive us of our fisheries on their own coasts. If we beat them, we will preserve them and probably acquire the country itself.

Yet I will not conceal that this subject caused me more anxiety than any other branch of the negotiations, and that, after having participated in the Treaty of Ghent, it was a matter of regret to be obliged to sign an agreement which left the United States in any respect in a worse situation than before the war. It is true that we might have defeated the whole object by insisting that the words "not liable to be impaired by any future war" should be inserted in the article. But this course did not appear justifiable. It was impossible, after a counter-project formed on compromise had been once offered, that the United States could by negotiations alone be reinstated in their enjoyment of the fisheries to their full extent; and if a compromise was to take place, the present time and the terms proposed appeared more eligible than the chance of future contingencies. I became perfectly satisfied that no reliance could be placed on legal remedies; that no court in England would give to the treaty of 1783 a construction different from that adopted by their

government, and that if an Act of Parliament was wanted, it would be obtained in a week's time and without opposition. If the subject was not arranged, immediate collision must ensue, and, Great Britain proceeding under legal forms to condemn our vessels, no resource remained for us but to acquiesce or commence hostilities. With much reluctance I yielded to those considerations, rendered more powerful by our critical situation with Spain, and used my best endeavors to make the compromise on the most advantageous terms that could be obtained. After a thorough examination of the communications on the subject which you transmitted to us, I think that substantially we have lost very little, if anything; and I only wish that it had been practicable to give to the agreement the form of an exchange in direct terms; that is to say, that we give fishing rights in certain quarters in consideration of the right of curing fish on a part of Newfoundland and of the abandonment of the British claim to the navigation of the Mississippi. This, however, could not be done in a positive manner, the British plenipotentiaries disclaiming any right to that navigation, and objecting, therefore, to a renunciation of what they did not claim. The article which they proposed on this last subject was only, as they said, an equivalent for what they pretended to concede in agreeing that the boundary west of the Lake of the Woods should be fixed at the 49th degree of north latitude.

The renewal of the commercial convention and the propositions relative to the colonial intercourse will make the subject of a distinct despatch.

I have the honor to be, with great respect, sir, your most obedient servant.

Extracts from "Memoirs of John Quincy Adams," by C. F. Adams, pub. 1875.

* * * * *

March, 1818.

18th. Walking this morning to the President's, I met Mr. Bagot, who turned and walked with me. He told me that he had received letters from Admiral Milne, commanding on the Jamaica station, informing him that he had issued orders similar to those of last year, to seize all American vessels which may be found fishing within the British Jurisdiction, and that he could not take upon himself the responsibility of counteracting those orders. He had been promised a proposal from us ever since last May, and had received none yet.

I told him that the President's illness had prevented it; that upon full enquiry it had been found that we could not safely accept any particular limited bounds for fishing-grounds, because the fish resorted at different times to different places; that Lord Castlereagh had promised me he would direct certain statements to be furnished to us upon which we might have founded proposals, which was not done; that he should have counteracted Admiral Milne's order, because the Judge at Halifax had decided last year that those seizures were unlawful without an act of Parliament; that I was afraid we should have to fight for this matter in the end, and I was so confident of our right, I was for it.

He said the correctness of the Judge's decision was very doubtful; that Great Britain had gone as far in this affair to accommodate us as she could go, and he thought would do nothing further, &c.

* * * * *

(May, 1818.)

15th. When I came to the office I found Mr. Bagot already there. He came to make the proposal already broached by Lord Castlereagh to Mr. Rush; stating that with regard to the slaves carried away from the United States by British officers after the late peace, the British Government accepted the proposal made by that of the United States, to refer the question of construction of the treaty which has arisen upon it to the arbitration of a friendly sovereign.

* * * * *

As to the fisheries, he said, he regretted very much not having received from us the proposal that had been promised him, as now the Legislature of Nova Scotia had taken up the subject. They were addressing the Crown, and although their influence might not be very great, yet it must always be something.

I said I hoped they would not listen to the Nova Scotia Legislature, who suffered their temper to run away with their interest. They had found themselves compelled to repeal their plaster laws, and now took up the fisheries by way of avenging themselves. If they were suffered to have their way, they would make perpetual war between Great Britain and the United States.

He said that was very true, but that we did not seem to think the complaints of the great inconveniences suffered by the British, in consequence of our fishermen frequenting their coast, were well founded.

I said we knew very well there was the inconvenience of competition. Their fishermen would be better satisfied if they had the whole coast to themselves. This was an old inconvenience, which had always existed when the fishery was common to the French and English. The competition also sometimes gave rise to quarrels between the fishermen of the different nations. That was an inconvenience, but it did not affect the question of right.

He said he alluded to the opportunities afforded for smuggling. I said there might have been something in that at one particular period of time before the late war, when large American ships went there and took cargoes for Europe—a state of things which probably would never happen again. Our fishing vessels now, and in all ordinary times, were small, without cargoes, frequenting chiefly a desert coast, where there could be no smuggling. I thought there was very little cause for such complaint now. The case of one of our vessels seized last summer at St. Andrew's, about which I had written to him, showed there was much more suspicion than real smuggling on that coast. As to the proposal which was to have been made to the British Government, and which had hitherto been delayed, its postponement had been owing to difficulties which had been discovered since it was promised. It was founded on the principle of assuming a range of coast within given latitudes for our fishermen to frequent, and abandoning the right to fish for the rest. But the fish themselves resorted at different times to different parts of the coast, and a place

which might be selected as very eligible now, might be, in the course of four or five years, entirely deserted. For my own part, I had always been averse to any proposal of accommodation. I thought our whole right, as stipulated by the Treaty of 1783, so clear that I was for maintaining the whole, and if force should be applied to prevent our fishermen from frequenting the coast, I would have protested against it, and reserved the right of recovering the whole by force whenever we should be able. It had, however, been determined otherwise here, and a proposal had been promised. Perhaps we should ultimately offer to give up the right of drying and curing on the shore, and reserve the whole right of fishing.

He said that, whatever was done, he hoped to hear from me again soon upon this and the other subjects of this interview.

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(August, 1818.)

August 1st. Mr. Bagot called upon me at the office, and we had conversation upon various subjects.

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He spoke also upon the fisheries, and said Lord Castlereagh had written him that orders had again been issued to the naval officers on the American station to suspend the captures of American fishing vessels for the present season. This measure had been taken, although the British Government had waited month after month to receive the proposals which had been so long and so frequently promised here.

I told him that the delays which had occurred to the making of those proposals had not been intentional, but occasioned by the varying information which had been received from the parts of the country most interested in the fisheries; and I added that if Mr. Gallatin and Rush, to whom I should this day dispatch the final instructions for their commercial negotiation, should not be able to conclude an article upon this subject, it would be our wish that a final decision by the Lords of Appeal on the legality of the captures of our fishing vessels, should take place, upon a full and solemn argument of all the questions involved in it.

(June, 1822.)

* * * * *

18th. Note from the President of the United States, urging me to sign the Convention with France. I sent to ask the French Minister to call at the office, which he did.

* * * * *

I spoke to him of the disturbance of our fishermen by French armed vessels on the coast of Newfoundland, and told him I should write to Mr. Gallatin on the subject. He said he had spoken to me or to Mr. Rush concerning it several years ago; but that he would look into the subject, and was disposed to do anything in it for our accommodation.

19th. This subject of the fisheries is absorbing so much of my attention that it encroaches upon my other necessary occupations. But I cannot give too deep attention to it.

* * * * *

(July, 1823.)

8th. * * * The Count de Menou came to enquire where were the Quirpon Islands; I showed him upon Mitchell's map. We had much conversation upon the subject of the French claim to exclusive fishery from them to Cape Ray. He said he had received further instructions from the Viscount de Chateaubriand on this affair, but there were still two previous instructions which he had not received. He saw it was an affair of great delicacy, and he did not see how they and we could enjoy a concurrent right of fishery on the same coast.

I told him the whole affair was a question between France and Great Britain, with which we had but a secondary concern. Great Britain was bound to maintain her own jurisdiction. And if she had conceded to us a right which she had already granted as an exclusive possession to France, she must indemnify us for it. The Count spoke also upon the subject of the maritime questions arisen from the war between France and Spain, upon which he said he should write to me.

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Mr. Buchanan to Mr. Crampton.

DEPARTMENT OF STATE,
Washington, 19th Aug^t., 1848.

JOHN F. CRAMPTON, Esq^r

&c. &c. &c.

SIR: I have had the honor to receive your note of the 30th April last, objecting, on behalf of the British Government, to that clause in the fifth article of the late treaty between Mexico and the United States, by which it is declared, that "the boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land", instead of one league from land, which you observe "is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea that washes the coasts of States."

In answer, I have to state, that the stipulation in the treaty can only affect the rights of Mexico and the United States. It is for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of the United States never intended by this stipulation to question the rights which Great Britain or any other Power may possess under the law of nations.

I avail myself of the opportunity to renew to you, Sir, the assurance of my high consideration.

JAMES BUCHANAN.

Extract from speech of Hon. Amos Tuck in the House of Representatives of the United States.

[Congressional Globe, vol. 25, 1851-2, p. 1186.]

* * * * *

AUGUST 27, 1852.

From the *first* of September to the close of this season, the mackerel run near the shore, and it is next to impossible for our vessels to obtain fares without taking fish within the prohibited limits. We

differ with England in regard to the measurement of these "limits," they claiming to run from "headland to headland," and we to follow the indentations of the coast. But the real difficulty is not here. *The British have never taken a vessel as a trespasser when not within the limits which we acknowledge we have renounced. They have given particular directions to the officers of their vessels not to do so, and the reason is plain. They know that if they exact a strict observance of our renunciation, on our own construction, they break up our mackerel fishery. Hence it would be folly in them to raise an issue on the "headland" doctrine on which most people, I think, would hold our construction to be the true one.*^[a] I do not think it generally known that the whole difficulty about the fisheries is about our right to take mackerel. The codfishing privileges are adequate already; and no vessel in that business has ever been seized or interfered with. I think it is proper to go still further, and to state frankly what, after a patient investigation of every source of authentic information within my reach, I believe to be the real difficulty.

The truth is, our fishermen need absolutely, and must have, the thousands of miles of shore fishery which have been renounced, or they must always do an uncertain business. If our mackerel men are prohibited from going within three miles of the shore, and are forcibly kept away, (and nothing but force will do it), then they may as well give up their business first as last. It will be always uncertain, and generally unsuccessful, however well pursued.

Perhaps I shall be thought to charge the commissioners of 1818, with overlooking our interest. They did so, in the important renunciation which I have quoted; but they are obnoxious to no complaints for so doing. In 1818, we took no mackerel on the coasts of the British possessions, and there was no reason to anticipate that we should ever have occasion to do so. Mackerel were then found as abundantly on the coast of New England as anywhere in the world, and it was not till years after that this beautiful fish, in a great degree, left our waters. The mackerel fishery on the provincial coasts has principally grown up since 1838, and no vessel was ever licensed for that business in the United States till 1828.^[a] The commissioners in 1818 have no other business but to protect the cod fishery, and this they did in a manner generally satisfactory to those most interested.

Mr. Marcy to Señor Escalante.

DEPARTMENT OF STATE,
Washington, 29th October, 1855.

To Señor Don ALFONSO ESCALANTE, &c., &c., &c.

SIR: I have the honor to invite your attention to the case of the firing of the Spanish frigate *Ferrolana* upon the United States Mail Steamer *El Dorado* in March, last, some eight or ten miles from the coast of Cuba, off Cape San Antonio. A correspondence upon this subject took place between your predecessor Mr. Cueto and this Department. Subsequently a similar correspondence has taken place between Mr. Perry, the Chargé d'Affaires *ad interim* of the United

[^a Italics not in original text.]

States at Madrid and Her Catholic Majesty's Minister for Foreign Affairs and between Mr. Dodge and the same functionary.

The *El Dorado* was a steamer employed in carrying the United States Mail between New York and Aspinwall in New Granada. When brought to by the *Ferrolana*, she was performing her regular trip from Aspinwall, was in her accustomed track on the open sea "eight or ten miles from land" with no attendant circumstances to excite suspicion or invite attack. In this situation, she was fired at, brought to, detained and searched by the *Ferrolana*. Although the Spanish Government disclaims a right to search United States vessels on the high seas, the facts prove that there was in the case of the *El Dorado* an actual search as well as a detention.

The character of the act is not changed by the terms used in describing it. If the firing at a vessel upon the open sea, the bringing her to, the sending on board of her an officer and the compelling the production of her papers and examining them, be not exercising the right of search, it would be difficult to say what facts would constitute a search.

The Spanish Government claims the right to search or detain foreign vessels on its own territorial waters for the purpose of ascertaining their character, but it is not understood that it meets this case with a positive declaration that the *El Dorado* was within its territorial waters.

The United States will never concede that, in the thoroughfares of commerce between Cape San Antonio and Yucatan or between the Key of Florida and the Cuban coast, the territorial waters of Spain extend beyond cannon shot or a marine league. Considering the vast amount of property transported over these thoroughfares, it is of the greatest importance to the interests of commerce that the extent of Spanish jurisdiction in these two straits should be accurately understood.

There is an intimation in a note of Her Catholic Majesty's Minister of Foreign Affairs to Mr. Dodge to the effect that it had been stated by Captain Engle of the United States war steamer *Princeton*, that if the parties had been reversed, he would have adopted in respect to a Spanish merchant vessel the same proceeding which was adopted by the Commander of the *Ferrolana* in respect to the *El Dorado*. An inquiry upon this point has been addressed to Captain Engle who denies that he ever made such a statement. But even if he had, he was not warranted in making it by his official orders or authorized to express the views of this Government upon the subject.

I have therefore to inform you, Sir, that the conduct of the Commander of the *Ferrolana* is considered to have been a violation of the rights of the United States, which the President expects will be disavowed by Her Catholic Majesty's Government and that proper reparation will be made therefor.

It is desirable that he should have it in his power to announce to Congress at the opening of the approaching session a satisfactory adjustment of this grave subject.

This communication is addressed to you in the hope that you may have or may receive instructions for that purpose.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my very high consideration.

W. L. MARCY.

Lord Russell to Hon. J. M. Mason, Confederate commissioner at London.

FOREIGN OFFICE, *July 10, 1863.*

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, enclosing an original protest made by the master and crew of the steamer *Margaret and Jessie*, with regard to the damage sustained by that vessel from being fired into a United States vessel of war.

A copy of the protest has also reached her Majesty's Government through other sources, and they learn from Lord Lyons, who has been in communication with the U. S. Government on the subject, that he has been assured by Mr. Seward that if it shall appear on enquiry that any act of hostility was committed on the occasion in question, within the jurisdiction of Great Britain, the act will be disavowed, and redress be promptly given.

Her Majesty's Government will therefore await the result of that enquiry.

I have the honor to be, sir, etc.,

RUSSELL.

J. M. MASON, Esq.

Opinion of court of enquiry convened April 7, 1864, at Boston, for the purpose of enquiring into an alleged violation of British territorial jurisdiction by the U. S. S. Rhode Island, under command of Commander S. D. Trenchard, May 30, 1863, in chasing and firing at the steamer Margaret and Jessie in English waters.

The court, in pursuance of the order convening the court, find the material facts which they deem to be established by the evidence to be:

That on the 30th of May last the U. S. S. *Rhode Island*, then and now under the command of Commander Stephen D. Trenchard, while cruising between Abaco and the island of Eleuthera, fell in with and gave chase to the steamer *Margaret and Jessie*, said vessel apparently aiming to reach Nassau, New Providence, which vessel it was the object and duty of the commander of the *Rhode Island* to overhaul and examine if possible. The courses of both vessels were to the southward, and eventually, as the low island of Eleuthera was approached, westerly, the chase hauling up as the land was approached in the hope that by superiority in speed she would cross the bows of the *Rhode Island* and ultimately escape.

That about 2:20 p. m., the *Margaret and Jessie* being from 1 mile to 1½ miles inshore of the *Rhode Island*, having received a shot, the last of a number fired from the *Rhode Island* during the chase, which appears to have struck some portion of her machinery, causing the escape of steam, kept away from the land, and was then run on the reef and deserted; that during the entire chase she showed no colors, but on her stern was found painted "*Margaret and Jessie, S. C.,*" showing her to belong to a State in rebellion.

That Commander Trenchard was desirous of avoiding any infraction of territorial jurisdiction and cautioned the pilot to avoid taking the ship nearer than 4 or 5 miles of the shore and to apprise him if

that distance was reached, or if the chase should get within 3 miles of the land, but that no such intimation was in fact given to him by the pilots. It is proven by the concurrent testimony of the witnesses who could testify on that point that at no time of the chase was the *Rhode Island* nearer than from 4 to $4\frac{1}{2}$ miles from the land, and that the *Margaret and Jessie* was at no time nearer than $3\frac{1}{2}$ miles from the shore, until after she had borne up to run on the reef, at which time the *Rhode Island* relinquished the chase.

The court is aware of the difficulty of determining distances under circumstances which characterize the case in question, and that necessarily a diversity of opinion in computing distances from ship to shore will exist. The testimony in this case is, however, very decided on that point, and from it the court can arrive at no other conclusion than that at no period of the chase of the *Margaret and Jessie* by the *Rhode Island* was the former vessel nearer the land of Eleuthera than 3 miles or more, or the latter vessel nearer than 4 or $4\frac{1}{2}$ miles from the same.

The court is of opinion that Commander Trenchard was desirous and anxious to avoid any violation of British territorial jurisdiction while chasing the *Margaret and Jessie*, and are also of opinion that in the case in question no violation of the territorial jurisdiction of Great Britain was committed.

SAM'L L. BREESE,
Rear Admiral and President.
HARVEY JEWELL,
Judge-Advocate.

Mr. Burnley to Mr. Seward.

BRITISH LEGATION,
Washington, September 10, 1864.

The undersigned, her Britannic Majesty's charge d'affaires in the United States, has the honor to inform Mr. Seward, the Secretary of State of the United States, that her Majesty's government have attentively considered the proceedings of the court of inquiry held at Boston on the conduct of Commander Trenchard, of the United States steamer *Rhode Island*, in firing on the steamer *Margaret and Jessie*, off the coast of Eleuthera, of which proceeding copies were enclosed in the note which Mr. Seward did Lord Lyons the honor to address to him on the 23d of June last.

The undersigned has now the honor to inform Mr. Seward that her Majesty's government are satisfied that, upon the evidence adduced, the court of inquiry was justified in coming to the conclusion that the territorial rights of her Majesty had not been violated, and that there had been no intention on the part of Commander Trenchard to violate these territorial rights.

But the undersigned must nevertheless observe, that although it is shown that the *Rhode Island* never fired at a less distance than four miles from the shore, the evidence as to the distance from land of the *Margaret and Jessie* when the last shot or shots were fired is much less distinct; and her Majesty's government are unable to consider that it was proved conclusively before the court of inquiry that at the time when these last shots were fired the *Margaret and Jessie*

may not have been within three miles from the shore. The undersigned has further the honor to inform Mr. Seward that he is instructed by his government to call the attention of the United States government to a matter of very considerable importance arising out of this case, namely, the bearing on the territorial limits of three miles beyond the seashore which the more powerful artillery now constructed may involve. The Parrott gun which was used on board the Rhode Island is stated by Commander Trenchard in his evidence before the court of inquiry, (page 7 of the proceedings,) to carry a distance of five miles; and he also expressed an opinion, although not so positively, that the range of the Dahlgren 30-pounder rifle gun was as great as that of the Parrott. In the present instance shot fired from the Rhode Island appear to have reached the shore, notwithstanding that that vessel did not approach within four miles of the land; and it is obvious that the use of weapons of this description when fired at that distance towards the shore, is calculated not only to infringe neutral jurisdiction by falling within neutral waters, but also seriously to endanger life and property on neutral territory itself.

The undersigned is accordingly directed by her Majesty's government to express to the United States government their hope that the United States government will concur with them in opinion that vessels should not fire towards a neutral shore at a less distance than that which would insure shot not falling in neutral waters or on a neutral territory.

The undersigned avails himself of this opportunity to renew to Mr. Seward the assurance of his highest consideration.

J. HUME BURNLEY.

Mr. Seward to Mr. Burnley.

DEPARTMENT OF STATE,
Washington, September 15, 1864.

SIR: The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of a note of the 10th instant, addressed to him by J. Hume Burnley, esq., her Britannic Majesty's charge d'affaires, in which, referring to the proceedings of a court of inquiry held at Boston on the conduct of Commander Trenchard, of the United States steamer Rhode Island, in firing on the Margaret and Jessie, off the coast of Eleuthera, Mr. Burnley states that he is directed by her Majesty's government to express to that of the United States their hope that the United States government will concur with them in opinion that vessels should not fire toward a neutral shore at a less distance than that which would insure shot not falling in neutral waters, or on neutral territory.

The undersigned has the honor to inform Mr. Burnley, in reply, that the proposition which has thus been made by her Majesty's government will be brought to the attention of other maritime powers, in order that if any change shall be made it may be general.

The undersigned avails himself of this occasion to renew to Mr. Burnley the assurance of his highest consideration.

WILLIAM H. SEWARD.

J. HUME BURNLEY, Esq., &c., &c., &c.

Mr. Seward to Mr. Burnley.

DEPARTMENT OF STATE,
Washington, September 16, 1864.

SIR: On the 30th day of May last Commander Trenchard, of the United States steamer Rhode Island, while chasing the insurgent vessel the Margaret and Jessie, in the open sea, off the coast of Eleuthera, in the Bahamas, fired at her at least one cannon-shot, which is alleged to have reached the neutral coast. Her Britannic Majesty's government thereupon complained to this government that the Rhode Island had come and was within the distance of a marine league, or three miles from the shore, when the cannon-ball was fired. On investigating the complaint it did not satisfactorily appear that a cannon-ball was fired by the chaser within the distance of three miles from the land; but, on the other hand, it was established that a Parrott gun, which was discharged, had a range of five miles, and that a ball from it might have reached the neutral shore, although fired outside of the line of maritime jurisdiction. Upon this state of facts her Majesty's government have, through you, expressed a hope that the United States will concur with the British government in opinion that vessels should not fire towards a neutral shore at a less distance than that which would insure shot not falling in neutral waters, or in a neutral territory. To this suggestion I at once replied, by order of the President, that the subject would be brought to the attention of other maritime powers, in order that, if any change of the existing construction of the maritime law should be made, it should first receive the assent of all the great maritime states.

There is reason to apprehend that the subject, although now abstractly presented, may soon become a practical question. Spain claims a maritime jurisdiction of six miles around the island of Cuba. In pressing this claim upon the consideration of the United States, Spain has used the argument that the modern improvement in gunnery renders the ancient limit of a maritime league inadequate to the security of neutral states.

When it was understood at Paris that an engagement was likely to come off before Cherbourg, between the United States ship-of-war Kearsarge and the pirate Alabama, the French government remonstrated with both parties against firing within the actual reach of the shore by cannon-balls fired from their vessels, on the ground that the effect of a collision near the coast would be painful to France.

For these reasons I think that the subject may now be profitably discussed; but there are some preliminary considerations which it is deemed important to submit to her Majesty's government: First. That the United States, being a belligerent, now when the other maritime states are at peace, are entitled to all the advantages of the existing construction of maritime law, and cannot, without serious inconvenience, forego them. Secondly. That the United States, adhering in war, no less than when they were in the enjoyment of peace, to their traditional liberality towards neutral rights, are not unwilling to come to an understanding upon the novel question which has thus been raised "in consequence of the improvement in gunnery." But, thirdly. It is manifestly proper and important that any such new construction of the maritime law as Great Britain suggests should be reduced to the form of a precise proposition, and then that it

should receive, in some manner, by treaty or otherwise, reciprocal and obligatory acknowledgments from the principal maritime powers.

On a careful examination of the note you have addressed to me, the suggestions of her Majesty's government seem to me to be expressed in too general terms to be made the basis of a discussion. Suppose, by way of illustration, that the utmost range of cannon now is five miles, are her Majesty's government understood to propose that the marine boundary of neutral jurisdiction, which is now three miles from the coast, should be extended two miles beyond the present limit? Again, if cannon-shot are to be fired so as to fall not only not upon neutral land, but also not upon neutral waters, then supposing the range of cannon-shot to be five miles, are her Majesty's government to be understood as proposing that cannon-shot shall not be fired within a distance of eight miles from the neutral territory? Finally, shall measure-distances be excluded altogether from the statement, and the proposition to be agreed upon be left to extend with the increased range of gunnery; or shall there be a pronounced limit of jurisdiction, whether five miles, eight miles, or any other measured limit?

I have to request that you will submit these suggestions to your government, to the end that they may define, with necessary precision, the amendment of maritime law which they think important, and upon which they are willing to agree with the other great maritime powers.

I have the honor to be, with high consideration, sir, your most obedient servant,

WILLIAM H. SEWARD.

J. HUME BURNLEY, Esq., &c., &c., &c.

Deputy Colonial Secretary of Newfoundland to Messrs. John Pew & Sons.

COLONIAL SECRETARY'S OFFICE,
ST. JOHN'S, NEWFOUNDLAND,
28 February, 1905.

SIRS, I am directed by the Rt. Hon. the Premier to acknowledge your favour of the 14th instant, with respect to the Fine imposed upon Captain Edward Cosgrove of the schooner "Columbia" by the authorities at Bay of Islands. I am to say in reply that the law in this respect must be carried out, and the Government cannot consent to a remission of the Fine. I beg to return you the enclosures that came forward with your letter.

I have the honor to be, Sirs, Your obedient servant,

ARTHUR MEWS,
Deputy Colonial Secretary.

MESSRS. JOHN PEW & SONS,
Gloucester, Mass.

[Inclosure.]

To all in authority, I make the following declaration;

"I sailed as Master of the Schooner "Columbia," Messrs John Pew & Son, Gloucester, owners, from Gloucester, Mass., October 1, 1904, for Bay of Islands, Newfoundland, for a fare of Salt Herring. I duly arrived at Bay of Islands and after securing my fare in the Middle Arm, and as soon as the vessel finished loading November 4, 1904, I called at Woods Island, supposing the Cutter was there, and I could procure a clearance from the officer on her. On my arrival, there was no Cutter, so I bore away for Lark Harbor. It then came on thick, and snowing, and night shutting in, I decided to go to sea the same day.

I arrived at Gloucester, November 12, 1904, and enclosed is a certificate from the Custom House Officer, of Gloucester, showing that the fare was duly landed at this port.

On another voyage to the Bay of Islands in another vessel, Schooner "Essex." On my arrival at the above named place, November 28, 1904, I was immediately summoned before a magistrate and a fine of \$200 and cost \$1 was imposed.

I do not feel that I have caused any loss to the Newfoundland government by my action in sailing for home without a clearance, especially as I expected to obtain one from the Cutter and took measures to secure such. My owners had give me imperative orders to sail at first chance when loaded, and to run no risk about ice. The year before, one of their vessels had been frozen in at Bay of Islands and caused them a severe loss. I was very anxious to get away and run no chances about the vessel getting in the ice, and under all the circumstances, I pray you to remit the fine to my owners."

EDWARD COSGROVE.

COMMONWEALTH OF MASSACHUSETTS,

County of Essex.

GLoucester, Feb. 14, 1905.

Then personally appeared Edward Cosgrove and made oath that the above statement by him subscribed is true

Before me

FRANCES BENNETT
Notary Public.

[Inclosure.]

MAGISTRATE'S OFFICE,
BAY OF ISLAND'S, N. F.,
Nov. 30th, 1904.

Received from—

Capt. Edward Cosgrove of the American Str. Essex of Gloucester the Sum of two hundred dollars, for a Breach of the Customs Act. For leaving any port in the Colony on the 30th October last past, in the Schooner "Columbia" without a clearance of the goods with which his Schooner was then laden. Fine \$200. for said Breach.

LEVI MARCHE, S. M.

[Inclosure.]

Certificate on landing of cargo.

UNITED STATES CUSTOMS SERVICE,
PORT OF GLOUCESTER,
Collector's Office, Feb. 14, 1905.

These are to certify, that there have been duly entered^a and delivered at this Port from on board the Sch. Columbia whereof Cosgrove is Master from the Port of Bay of Islands, N. F. entered Nov. 14, 1904 the following packages of merchandise:

1300 Bbls. Herring

Witness our hands and seals this 14th day of Feb. 1905.

WM. H. JORDAN,
Collector.

The British Ambassador to the Secretary of State.

BRITISH EMBASSY,
Washington, October 22, 1905.

SIR: In continuation of my note of the 20th of October regarding the Newfoundland fishery question, I have now the honor to inform you that I have received from the governor of Newfoundland a telegram which seems to dispose of one important part of that question.

His excellency telegraphs that no Newfoundland officer is preventing American vessels from fishing on the treaty coast, and that no distinction is being drawn between registered vessels and licensed vessels.

The local officers have been told that American captains must not engage crews on the Newfoundland coast to fish for them, but no objection is made to their using the nets themselves.

I have, etc.,

H. M. DURAND.

The Secretary of State to the British Ambassador.

No. 337.]

DEPARTMENT OF STATE,
Washington, October 23, 1905.

EXCELLENCY: I have the honor to acknowledge receipt of your note of the 22d instant, and to express my gratification at the information it communicates on the authority of a telegram from the governor of Newfoundland, that no Newfoundland officer is preventing American vessels from fishing on the treaty coast; that no distinction is being drawn between registered vessels and licensed vessels; and that the local officers in Newfoundland have been told that American captains must not engage crews on the Newfoundland coast to fish for them, but that no objection is made to their using the nets themselves.

I have, etc.,

ELIHU ROOT.

^a This means master's entry of cargo by manifest.

Mr. Dickinson to Mr. Knox.

WAR DEPARTMENT,
Washington, November 29, 1909.

SIR: In response to the request contained in a letter from the Assistant Secretary of State, dated November 18th instant, I have the honor to transmit herewith, a letter from the Acting Chief of Ordnance, U. S. Army, concerning the range of cannon employed by the United States for coast defense in the year 1818 and during the twenty-five years preceding that date, together with such further information of a general nature concerning the range of cannon employed by other governments for that purpose during said period, as can be conveniently furnished.

Very respectfully,

J. M. DICKINSON,
Secretary of War.

The Honorable the SECRETARY OF STATE.

[Inclosure.]

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ORDNANCE,
Washington, November 27, 1909.

The Honorable the SECRETARY OF WAR.

SIR: 1. Referring to the communication addressed to the Honorable the Secretary of War by the Assistant Secretary of State under date of November 18, 1909, requesting accurate information as to the range of cannon employed for coast defense in the year 1818 and during the twenty-five years preceding that date, by the Government of the United States, together with such further information of a general nature concerning the range of cannon employed by other governments for that purpose during the period, as can be conveniently furnished, I have the honor to state that the following notes give, it is thought, the desired information.

2. On December 14, 1793, there were mounted in the fortifications in the United States 24-pdr. guns. (American State Papers—Military Affairs—Vol. 1, pp. 44–60 inclusive.)

3. During the period 1794 to 1798 contracts were entered into for and deliveries made of 32-pdr. guns suitable for fortifications. (American State Papers—Military Affairs—Vol. 1, page 123.)

4. As far as available records show the 32 pdr. gun remained the maximum caliber until the year 1801–2, at which time 42-pdr. cannon were installed in the fortifications. (Major Jonathan Williams' Report on Fortifications in the Year 1802, in the possession of the Chief of Engineers, U. S. Army; also Historical Sketch of the Artillery, U. S. Army, by First Lieutenant William E. Birkhimer, page 277.)

5. By the year 1809 50-pdr. Columbiads had been mounted in the fortifications. (Maj. J. G. Swift's report dated December 5, 1809, and Capt. G. Bomford's report on fortifications dated December 1, 1809, both of which reports are in the files of the Office of the Chief of Engineers, U. S. Army.)

6. The most powerful guns mounted in the fortifications in the United States during the twenty-five years preceding the year 1818 were therefore the 42-pdr. gun and the 50-pdr. Columbiad. The Ordnance Manual of 1850 gives the range of the 42-pdr. for an angle of

elevation of 5° as 1915 yards. From the ranges given for this and other angles of elevation in the Ordnance Manual, the muzzle velocity of this gun was 1550 feet per second. With this velocity the range for an angle of elevation of 45° would be 5300 yards, or 2.61 nautical miles.

7. According to the same Manual the range of the 50-pdr. Columbiad for an angle of elevation of $27^{\circ} 30'$ was 4812 yards. The calculated range of this gun for an angle of elevation of 45° was 5550 yards, or 2.73 nautical miles.

8. The construction of the carriages of seacoast cannon of the period in question, as far as can be obtained from the old plates, did not permit angles of elevation greater than 10° or 15° . Much dependence however was placed, in firing over water, upon the efficiency of ricochet fire, with angles of elevation from 0 to 5° , as there was no tendency of round shot from these smooth-bore guns to ricochet to right or left of the plane of fire as with projectiles from rifled guns. The American Artillerist's Companion, by Lieut. Col. Louis de Tousard, published in 1809, states that the range of the 24-pdr. gun, with an angle of elevation of 45° , was 4500 yards, and that the range to which the projectile would ricochet over water, with an angle of elevation from 4 to 5° , was 4300, or only 200 yards less than the maximum range.

9. The publication referred to in the preceding paragraph states that England at that time had 42-pdr. guns, and that France had 36-pdr. guns, and the description thereof indicates that they had about the same range as the guns mounted in the fortifications of the United States. In fact, the report of Col. George Bomford, dated January 29, 1822, page 342, Vol. 2, American State Papers—Military Affairs—contains the following remark:

“It is proper to remark that the cannon now on hand consist of a great variety of patterns, of English, French and American manufacture; some of those procured during the Revolutionary War are still on hand, and included in the returns of the present time.”

10. While further search might add additional information to that contained in this communication, it is thought that the data quoted are sufficient to justify the assumption that three marine or nautical miles was the maximum range of cannon in the year 1818.

Very respectfully,

JNO. T. THOMPSON,
Lieut. Col. Ord. Dept., U. S. A.,
Acting Chief of Ordnance.

Dr. Doughty, Dominion Archivist, to Consul General Foster.

OTTAWA, January 5th, 1910.

DEAR SIR: In answer to your letter of the 29th of December last, I beg to say, that I have been unable to find any of the correspondence of the Customs Officers for the year 1818. Communication with the Home Office was not made through the regular channels, and I presume that the original despatches were retained by the Customs. From the Almanacs of the period however, we have prepared a list of the ports of entry in Upper Canada, Quebec, and Gaspé.

Regarding the Census, an estimate has been made of the population of Lower Canada, Upper Canada, Nova Scotia, New Brunswick and Prince Edward Island.

If this information is not sufficient for your purpose please advise me, and I shall be pleased to have a search made in England.

I have the honour to be,

Sir,

Your obedient servant,

(Signed)

A. G. DOUGHTY

Dominion Archivist.

J. G. FOSTER, *Esq.*

Consul General,

American Consular Service,

Ottawa.

[Inclosure.]

Memo for Dr. Doughty.

Herewith is a list of the ports of entry of Lower Canada and Nova Scotia, for the year 1818, as found in the Quebec and the Nova Scotia Almanacs for the years 1818 and 1819, respectively.

For Upper Canada, I could find nothing for the year 1818, the nearest year to 1818 that could be found was 1821. I enclose the list for that year.

For New Brunswick and Prince Edward Island no information could be found.

As to the population of British North America in 1818, it is impossible to give any correct figures, there having been no census for that year in any of the provinces, but, by taking the proceeding and subsequent censuses, I have come to the following average:

Lower Canada about	370,000
Upper Canada "	130,000
Nova Scotia "	85,000
New Brunswick "	58,000
Prince Edward Island	20,000
Total	663,000

These figures are, perhaps a little higher than the real number, but as a compensation, I leave off the small population of the Red River Settlement and Indian Territories.

(Signed)

F. J. AUDEL.

Jan. 3, 1910.

[Annex.]

UPPER CANADA ALMANAC, 1821.

Ports of entry, Upper Canada.

Cornwall
Prescott
Brockville
Gannanoque
Kingston
Bath
Belleville

Newcastle
Port Hope
York
Drummond
Burlington Bay
Niagara
Queenstown

Chippawa
Fort Erie
Charlotteville
Dover
Port Talbot
Amherstburgh
Sandwich

QUEBEC ALMANAC, 1818.

Ports of entry, Lower Canada.

Quebec	St. Johns	Coteau du Lac
Montreal	Chateauguay	

Subports.

Gaspé	New Carlisle & Carleton.
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NOVA SCOTIA ALMANAC, 1819.

Ports of entry.

Halifax	Liverpool	Lunenburg
Shelburne	Douglas	Barrington
Yarmouth	Horton	Windsor
Weymouth	Annapolis	
Digby	Pictou	

Consul Benedict to the Secretary of State.

REPORT RESPECTING NEWFOUNDLAND CUSTOM HOUSES.

AMERICAN CONSULATE,
St. John's, Newfoundland, January 6, 1910.

List of Custom Houses on the Southern Coast west of Fortune Bay, and on entire Western Coast of Newfoundland.

Place.	Date of Establishment.
La Poile.....	1848
Gaultois.....	1850 October 12
Harbor Breton.....	1853
Burgeo.....	1858
Channel.....	
Pushthrough.....	1866
St. Jacques.....	1877
St. Georges.....	1878
Bonne Bay.....	"
Bay of Islands.....	"
Flowers Cove.....	"
Codroy.....	1882
Belleoram.....	1898
Port aux Basques.....	1899
Port au Port.....	1900
Robinson's Head.....	"
Sandy Point.....	1901
Ramea.....	1903
Port Saunders.....	1904
Wood's Island.....	"
Humbermouth.....	1905

Custom Houses on the Coast of Newfoundland Labrador.

For Labrador (Officer on board Vessel).....	1864
Blanc Sablon.....	"
Rigoulette.....	1902

NOTE: In 1864 a Custom officer was appointed to collect duties on the entire Newfoundland Labrador Coast, going by vessel and landing at any point necessary. Two permanent Custom Houses have been established since then,—Blanc Sablon and Rigoulette. The Labrador office still exists.

JAMES S. BENEDICT, *Consul.*

Consul Benedict to the Secretary of State.

REPORT RESPECTING NEWFOUNDLAND ELECTIONS OF 1908-1909.

AMERICAN CONSULATE,
ST. JOHN'S, NEWFOUNDLAND, *January 7, 1910.**Result of First Election for Members of Newfoundland Assembly, Monday,
November 2, 1908.*

BOND PARTY (LIBERAL).		MORRIS PARTY (TORY OR PEOPLE'S).	
1. Sir Robert Bond,	Twillingate	1. Sir E. P. Morris,	St. John's West
2. J. A. Clift,	"	2. J. R. Bennett,	"
3. G. Roberts,	"	3. M. J. Kennedy,	"
4. J. M. Kent,	St. John's East	4. Sydney D. Blandford,	Bonavista
5. George Shea,	"	5. Donald Morrison,	"
6. J. Dwyer,	"	6. Capt. William Winsor,	"
7. Eli Dawe,	Harbor Grace	7. John C. Crosbie,	Bay-de-Verde
8. William Earle,	Fogo	8. Jesse Whiteway,	"
9. G. W. Gushue,	Trinity	9. Robert Watson,	Trinity
10. A. W. Miller,	"	10. William Woodford,	Harbor Main
11. J. G. Maddock,	Carbonear	11. J. J. Murphy,	"
12. W. J. Ellis,	Ferryland	12. Michael P. Cashin,	Ferryland
13. E. M. Jackman,	Placentia	13. Charles H. Emerson,	Fortune Bay
14. M. S. Sullivan,	"	14. A. W. Piccott,	Harbor Grace
15. J. Davis,	"	15. Capt. J. R. Parsons,	"
16. E. H. Davey,	Burin	16. W. R. Warren,	Port-de-Grave
17. H. Gear,	"	17. Robert Moulton,	La Poile
18. W. M. Clapp,	St. Barbe	18. J. F. Downey,	St. George's

*Result of Second Election for Members of Newfoundland Legislature,
Saturday, May 8, 1909.*

BOND PARTY (LIBERAL).		MORRIS PARTY (TORY OR PEOPLE'S).	
1. Sir Robert Bond,	Twillingate	1. Sir E. P. Morris,	St. John's West
2. J. A. Clift,	"	2. J. R. Bennett,	"
3. G. Roberts,	"	3. M. J. Kennedy,	"
4. J. M. Kent,	St. John's East	4. Sydney D. Blandford,	Bonavista
5. George Shea,	"	5. Donald Morrison,	"
6. J. Dwyer,	"	6. Capt. William Winsor,	"
7. William Earle,	Fogo	7. John C. Crosbie,	Bay-de-Verde
8. E. H. Davey,	Burin	8. Robert Watson,	Trinity
9. H. Gear,	"	9. Jesse Whiteway,	Bay-de-Verde
10. W. M. Clapp,	St. Barbe	10. William Woodford,	Harbor Main
		11. J. J. Murphy,	"
		12. Micheal P. Cashin,	Ferryland
		13. Charles H. Emerson,	Fortune Bay
		14. A. W. Piccott,	Harbor Grace
		15. Capt. J. R. Parsons,	"
		16. W. R. Warren,	Port-de-Grave
		17. Robert Moulton,	La Poile
		18. J. F. Downey,	St. George's
		19. J. R. Goodison,	Carbonear
		20. P. F. Moore,	Ferryland
		21. A. H. Seymour,	Harbor Grace
		22. R. J. Deveraux,	Placentia
		23. W. R. Howley,	"
		24. Frank J. Morris,	"
		25. R. A. Squires,	Trinity
		26. Edwin G. Grant,	"

*The origin and mission of the Hydrographic Office.**

[Extract.]

FOUNDING A DEPOT OF CHARTS AND INSTRUMENTS.

It is a notable circumstance that in the United States there grew out of the necessity for an institution to provide the Navy and mercantile marine with charts and sailing directions the national astronomical observatory and the national meteorological service, besides the Hydrographic Office itself.

In order to prevent the difficulties and dangers to which our national vessels had previously been exposed from the want of an orderly and sufficient supply of information respecting the navigation of those parts of the world to which their services might be directed, it was ordered by the Navy Department, in December, 1830, upon a previous recommendation of the Board of Navy Commissioners, that a depot should be established at the seat of Government for the purpose of taking charge of such nautical charts and instruments as had collected in the various navy yards, and of assuming the care and issue of the charts and instruments furnished to United States vessels. It was also made a part of the work of the depot to ascertain the errors and rates of all chronometers sent to United States vessels on fitting out for sea. This was first accomplished by means of sextant and circle observations; but, according to the official memoir of the founding of the United States Naval Observatory, a 30-inch transit instrument was soon obtained for that purpose and mounted in a small circular building near the rented house on which the depot had been installed, between Seventeenth and Eighteenth streets, on what is now G street northwest, in Washington City.

The difficulties that were experienced in obtaining and maintaining an adequate supply of the latest charts early led to a recommendation from the Board of Navy Commissioners proposing to the Secretary of the Navy that the means for producing charts should be installed at the depot, and the introduction of a lithographic press, in May, 1835, constituted the initial attempt at chart production. In the meantime the depot had been moved early in 1834 to the "Wilkes House," on Capitol Hill, where there was erected, about 1,000 feet north of the Dome of the Capitol, a small observatory, in which was mounted a 5-foot transit instrument. Although the depot thus gained somewhat of the character of an observatory, no regular series of astronomical observations were made, except for the purpose of rating chronometers, and the work of the depot continued to relate almost solely to the purchase, care, and issue of charts and instruments. It is significant of the tendency that was then already growing up to have the depot of charts become an agency for emphasizing and fostering the contributions of America to the geographical sciences, that the head of the depot should have been selected, in 1836, to proceed to Europe to purchase scientific instruments for the United States

[* Reprint of hydrographic information. From the Pilot Charts and Hydrographic Bulletin published by the United States Hydrographic Office under authority of the SECRETARY OF THE NAVY. No. 9, Washington, D. C., January 1, 1910.]

Exploring Expedition, and subsequently to organize and command this expedition, which had been authorized by Congress, to be sent out in response to the popular sentiment that the United States should take a larger share in scientific work for the advancement of navigation and commerce.

CHARTING GEORGES SHOAL AND OTHER REGIONS.

The engraved chart of Georges Shoal, situated in the Atlantic Ocean eastward of Cape Cod, was published in four sheets in 1837, from the survey made by Lieutenant Wilkes and the officers of the U. S. brig *Porpoise* and the schooners *Maria* and *Badassah*, and from the surveys executed under his command between this period and the close of 1842 by the Exploring Expedition, there were subsequently issued eighty-seven engraved charts, which principally related to the island groups of the Pacific Ocean and have continued, in many instances, to serve to the present time as the basis of the charts issued by all the great maritime nations. The work of engraving the plates for these charts, as, in fact, for all engraved charts published by the depot during its existence of upwards of thirty-five years, was done under contract by persons unconnected with the depot itself.

Mr. Alexander to the Secretary of State.

WASHINGTON, D. C., February 1, 1910.

The Honorable The SECRETARY OF STATE.

SIR: In reply to your inquiry as to the relative cost of outfitting by American and Newfoundland fishermen engaged in the herring and cod fisheries on the treaty coasts, I have the honor to send you the following information.

The cost of outfitting for the *herring fishery* on the West Coast of Newfoundland is as follows:

1. For a Gloucester fisherman, which is ordinarily a vessel of about 120 tons costing approximately \$15,000., equipped for purse-seining, the cost of outfit will be between \$2550. and \$2950., made up of the following items:

2 seines at \$800. to \$1000_____	\$1600. - \$2000.
1 pocket _____	80.
Purse lines for seines _____	70.
2 seine-boats at \$375 _____	750.
1 dory _____	20.
Oars and rowlocks _____	45.
Roller for seine, boat-boom, seine boom _____	18.

2. Newfoundland fishermen, operating in small boat from the shore, would require an outfit costing approximately \$190., made up as follows:

Boat _____	\$55. - 75.
6-60 rann nets at \$17 _____	102. 00
6 net anchors at \$2.50 _____	15. 00
400 fathom road line _____	17. 00

The cost of outfitting for the *cod fishery* is as follows:

1. For a Gloucester fisherman of the size already mentioned, equipped for trawling, the cost would be approximately from \$900. to \$1000., made up of the following items:

9 double dories at \$25-----	\$225.
Oars for same-----	31. 50
96 dozen 18 lb. lines for trawls at \$3-----	228.
96 " 4½ " " " " " 90 cts-----	86. 40
360 gross No. 15 hooks " " " 30 "-----	108.
900 lbs., buoy line " " " 11 "-----	99.
36-16 lbs. anchors " " " 90 "-----	32. 40
36 buoys " " " 85 "-----	30. 60
36-20 inch tubs " " " 40 "-----	14. 40

2. For a Newfoundland boat-fishery operated from the shore, in which hand-lines are used, it is difficult to approximate the cost of outfit as it would vary very much in individual cases. I can only give, therefore, the retail cash prices, prevailing in Newfoundland, for gear employed by fishermen engaged in such fishery:

30 fathom hemp lines, per dozen-----	\$1. 70- \$3. 80
50 fathom 2-8 lb. tarred cotton lines, per dozen-----	1. 50- 4. 75
" " 10-18 lb. " " " "-----	5. 50- 8. 80
Nos. 14-15 ringed and japanned hooks, gross-----	18 cts-24 cts
Small, mid. & large quarter hooks, "-----	22 cts-52 "
5 sq. bultow "-----	24 cts
Cod jiggers, "-----	95 cts.

I do not think that, in any case, the cost of an outfit including boat, would exceed \$95.

In addition to the cost of equipment for American vessels engaged in the herring and cod fisheries, the necessary expenses of a voyage would include the moneys paid out for implements used for cleaning fish, the barrels and salt for packing the catch, and the ship stores including clothing, food, fuel, &c.

I have the honor to be,

Respectfully yours,

A. B. ALEXANDER.

GEOGRAPHICAL DATA.

EXTRACTS FROM BLUNT'S AMERICAN COAST PILOT.

[Pub. New York, 1842.]

GULF OF ST. LAWRENCE.

The following directions for navigating this Gulf are taken, with some alterations as to arrangement, from those of Captain H. W. Bayfield, R. N., who has been employed in a minute survey of this gulf for some years.

The main entrance into this Gulf is between Cape May, the South-Western point of Newfoundland, and Cape North, the North-East point of Cape Breton Island.

Ice.—Among the difficulties of the navigation may be mentioned the ice. In spring the entrance and eastern parts of the gulf are frequently covered with it, and vessels are sometimes beset for many days. Being unfitted for contending with this danger, they often suffer from it, and are occasionally lost; but serious accidents from this cause do not frequently occur, because the ice is generally in a melting state, from the powerful effect of the sun in spring. In the fall of the year accidents from ice seldom occur, except when the winter commences suddenly, or when vessels linger imprudently late from the temptation of obtaining high freights.

Fogs.—But all danger from ice is far less than that which arises from the prevalence of fogs; they may occur at any time during the open or navigable season, but are most frequent in the early part of summer; they are rare, and never of long continuance during westerly winds, but seldom fail to accompany an easterly wind of any strength or duration. The above general observation is subject, however, to restriction, according to locality or season. Thus winds between the south and west, which are usually clear weather winds above Anticosti, are frequently accompanied with fog in the eastern parts of the gulf. Winds between the south and east are almost always accompanied with rain and fog in every part. E. N. E. winds above Point de Monts, are often E. S. E. or S. E. winds in the gulf, changed in direction by the high lands of the south coast, and have therefore in general the same foggy character. I speak of winds of considerable strength and duration, and which probably extend over great distances. Moderate and partial fine weather winds may occur without fog at any season, and in any locality. In the early part of the navigable season, especially in the months of April and May, clear weather N. E. winds are of frequent occurrence, and they also sometimes occur at other seasons, in every part of the Gulf and River St. Lawrence.

The fogs sometimes last several days in succession, and to a vessel either running up or beating down, during their continuance, there

is no safe guide but the constant use of the deep sea lead, with a chart containing correct soundings.

The fogs, which accompany easterly gales, extend high up into the atmosphere, and cannot be looked over from any part of the rigging of a ship. They, however, are not so thick as those which occur in calms after a strong wind, and which are frequently so dense as to conceal a vessel within hail; whilst the former often, but not always, admit the land, or other objects, to be distinguished at the distance of half a mile or more in the day time.

The dense fogs which occur in calms, or even in very light winds, often extend only to small elevations above the sea; so that it sometimes happens, that when objects are hidden at the distance of 50 yards from the deck, they can be plainly seen by a person 50 or 60 feet up the rigging. In the months of October and November the fogs and rain that accompany easterly gales are replaced by thick snow, which causes equal embarrassment to the navigator.

Winds.—The prevailing winds during the navigable season are either directly up or directly down the estuary, following the course of the chains of high lands on either side of the great valley of the St. Lawrence. Thus a S. E. wind in the gulf becomes E. S. E. between Anticosti and the south coast, E. N. E. above Point de Monts, and N. E. above Green Island. The westerly winds do not appear to be so much guided in direction by the high lands, excepting along the south coast, where we have observed a W. S. W. wind at the island of Bic becomes W., W. N. W., and N. W., as we ran down along the high and curved south coast, until it became a N. N. W. wind at Cape Gaspe. These winds frequently blow strong for three or four days in succession; the westerly winds being almost always accompanied with fine, dry, clear and sunny weather; the easterly winds as frequently the contrary, cold, wet, and foggy. In the spring the easterly winds most prevail, frequently blowing for several weeks in succession. As the summer advances, the westerly winds become more frequent, and the S. W. wind may be said to be the prevailing wind in summer in all parts of the river and gulf. Light south winds take place occasionally; but north winds are not common in summer, although they sometimes occur. Steady N. W. winds do not blow frequently before September, excepting for a few hours at a time, when they generally succeed easterly winds which have died away to a calm, forming the commencement of strong winds, and usually veering to the S. W. The N. W. wind is dry, with bright clear sky, flying clouds, and showers. After the autumnal equinox, winds to the northward of west become more common, and are then often strong steady winds of considerable duration. In the months of October and November the N. W. wind frequently blows with great violence in heavy squalls, with passing showers of hail and snow, and attended with sharp frost.

Thunder storms are not uncommon in July and August; they seldom last above an hour or two; but the wind proceeding from them is in general violent and sudden, particularly when near the mountainous part of the coast. sail should, therefore, be fully and quickly reduced on their approach.

Strong winds seldom veer quickly from one quarter of the compass to another directly or nearly contrary: in general they die away by degrees to a calm, and are succeeded by a wind in the opposite direction.

I do not mean, however, by this observation, that they may not veer to the amount of several points. N.W. winds seldom or never veer round by N. and N.E. to east and S. E.; but they do frequently, by degrees, to the S.W., after becoming moderate. S.W. winds seldom veer by the N. W. and north to the eastward, but sometimes by the south to S. E. and east. Easterly winds generally decrease to a calm, and are succeeded by a wind from the opposite direction.

In the fine weather westerly winds of summer, a fresh topgallant breeze, will often decrease to a light breeze or calm at night, and spring up again from the same quarter on the following morning; under these circumstances only may a land breeze off the north coast be looked for. I have observed the same off the south coast also, but not so decidedly or extending so far off shore. I have occasionally carried the north land wind nearly over to the south coast just before daylight, but have never observed the south land wind extend more than 5 or 6 miles off, and that very rarely. Under the same circumstances, that is with a fine weather westerly wind going down with the sun, a S. W. land breeze will frequently be found blowing off the north coast of Anticosti at night and during the early part of the morning. If, however, the weather be not settled fair, and the wind does not fall with the sun, it will usually prove worse than useless to run a vessel close in shore at night in the hope of a breeze off the land. Such is the usual course of the winds in common seasons, in which a very heavy gale of wind will probably not be experienced from May to October, although close-reefed topsail breezes are usually common enough. Occasionally, however, there are years, the character of which is decidedly stormy. Gales of winds, of considerable strength, then follow each other in quick succession and from opposite quarters.

* * * * *

The Magdalen Islands.—The Magdalens are a chain of islands, assuming an irregular curved direction, the greatest length of which, from the S.W. cape of Amherst Island to the east point, is 35 miles; but if the smaller isles be included, as they evidently form a part of the Magdalen group, the whole length of the range, from the Deadman to the Great Bird Rock, will be 56 miles, in an E.N.E. direction.

There are at present upon the islands about 1100 inhabitants, the majority of whom are of French extraction, and who all inhabit Amherst, Grindstone, and Alright Islands, with the exception of about 11 or 12 families divided between Entry Island, Grosse Isle, and East Island, near the N.E. extremity of the chain. Ships may obtain limited supplies of fresh provisions, especially at Entry Island, and water most readily from Amherst Harbor, either from a spring which issues from under the Demoiselle Hill, or from a small stream which falls into Ance a la Cabane, near the S.W. cape of the island. Wood for fuel is becoming scarce near the settlements. Large spars are not to be had, unless when they chance to be saved from wrecks, but small ones, of spruce and juniper, may be obtained. The latter, of which the inhabitants build their fishing boats and shallops or smaller schooners, somewhat resembles larch wood; it is said to be extremely strong and durable.

When first made from sea, the Magdalens appear like several hilly islands, with channels between, but, on a nearer approach, they are seen to be all connected together, with the exception of Entry Island, by a double line of sand bars and beaches, inclosing extensive lagoons,

having very narrow entrances, by which the tide finds access and egress. These sand bars are in some parts only a few feet above the sea, whilst in others they rise into hills of blown sand of considerable elevation. They appear to be increasing, since they are generally ridges of sand with from 9 to 12 feet water parallel to, and from 50 to 100 fathoms outside the beach. There are 3 and 4 fathoms of water between these ridges and the shore, a circumstance which has often proved fatal to the crews of vessels wrecked upon these shores. These hilly islands thus disposed in a curvilinear shape, and connected together by sand bars, inclosing lagoons, reminds one forcibly of those islands in tropical seas which are connected together by coral reefs.

In a bright sunny day of summer, the cliffs of various colors, in which different shades of red predominate, and the yellow of the sand bars contrasted with the green pastures of the hill sides, the darker green of the spruce trees, and the blue of the sea and sky, produce an effect extremely beautiful, and one which distinguishes these islands from anything else in the Gulf of St. Lawrence. In stormy weather, the appearance is equally characteristic. Isolated hills and craggy cliffs are then dimly seen through the rain and mist which accompany an easterly gale, and appear joined by long ranges of breakers, which almost hide the sand-bars. At such times it is dangerous to attempt making the islands, for in approaching the lower parts, the breakers would probably be the first thing seen from a vessel.

The Magdalens possess no harbour for ships, but three for small vessels, named Amherst, House, and Grand Entry Harbors, which will be noticed in the following concise description of the shores of the islands, and the dangers off them.

The east point of the Magdalens is of low sand, inclosing several shallow ponds, and having several sand hills, some of which are near its extremity, while others, of greater elevation and further to the westward, extend in a chain nearly to the N. E. cape. These last-mentioned sand hills are inland, and on the margin of the northeastern part of the great lagoon. The N. E. cape is a hill on East Island, which stands at the head of Grand Entry Harbor. It is a very remarkable cape, and its isolated cliffs, being 230 feet high, can be seen all over the sand-hills and sand-bars, so that when these last are below the horizon, the N. E. cape appears to be the eastern extremity of the chain.

DETAILED DESCRIPTION OF PORTIONS OF THE SOUTHERN, WESTERN, AND NORTHERN COASTS OF NEWFOUNDLAND, EXTRACTED FROM SAILING DIRECTIONS FOR NEWFOUNDLAND, PUBLISHED BY THE HYDROGRAPHIC OFFICE OF THE U. S. NAVY DEPARTMENT, UNDER THE TITLE "NEWFOUNDLAND AND THE LABRADOR COAST, 1909."

Bear island [Lat. $47^{\circ} 36' 30''$ N., Long. $57^{\circ} 22' 20''$ W.] is situated in the entrance to White Bear bay, and northwestward $\frac{9}{10}$ mile from West point of Bear head; its summit is a dark wooded cone 600 feet high, and the island falls steeply on the southern and eastern, but gradually on the other sides. The eastern and southern sides have deep water close to them. On the southern side the cliffs are white and bare for some distance above the sea, while the cliffs under Bear head are dark.

White Bear bay extends $10\frac{1}{2}$ miles in a northerly direction from the northern point of Bear island to the freshwater brook at its head, with an average width of 1,200 yards. The shores are steep, in many places precipitous, 700 to 1,000 feet high, with deep water close-to.

Ramea islands [Lat. $47^{\circ} 31' 30''$ N., Long. $57^{\circ} 21' 30''$ W.], the eastern end of which lies southward, distant 3 miles from Bear head of White Bear bay, consist of two large islands, with numerous smaller islands, islets, rocks, and shoals to the southward and westward of them.

Great island, the eastern and largest of the group, is $1\frac{3}{4}$ miles long in an easterly and westerly direction and 1,200 yards broad; its northern coast is bold and slopes abruptly from rugged hills that present an irregular outline. Gull hill, the highest of these hills, is 427 feet high, flat topped, and has a steep fall on its eastern side that makes it conspicuous on northerly bearings.

Numerous rocks and shoals on the southern side of Great island prevent the passage to Eastern harbor being taken without local knowledge.

Northwest island, 400 yards westward of Great island, is $1\frac{1}{6}$ miles long in a northeasterly and southwesterly direction, about 900 yards broad, and has several peaks; Man-of-war hill, the highest, is 211 feet high, and there is a bowlder on its summit.

Light [Lat. $47^{\circ} 30' 30''$ N., Long. $57^{\circ} 24' 35''$ W.]—A cylindrical lighthouse, 35 feet high and painted red and white in spiral bands, with a white dwelling attached, on Northwest head, which is the southern point of Northwest island, exhibits at 125 feet above high water an intermittent white light showing thus: Light, one and a half seconds; eclipse, one and a half seconds, which should be seen from a distance of 16 miles in clear weather excepting on westerly bearings, where it is obscured by the land.

Ramea Colombier island, distant 1 mile west-northwestward from Northwest head lighthouse, is 135 feet high; it is one of the western of the islands, makes as a cone from all directions, and is surmounted by a flagstaff.

Southwest island, southward of the western end of Northwest island, is about 80 feet high. Ramea harbor, on its eastern side, is a good harbor for fishing craft. Southwest rocks extend westward 600 yards from the western point of Southwest island. Southward of this island and these rocks are several shoals.

Northwest head, the northwestern part of the western entrance point of White Bear bay, is rugged and faced by cliffs.

Turks head, westward, distant $1\frac{1}{2}$ miles from Northwest head, is a steep bluff with a rugged background. Between these heads is Emily Storehouse cove, a bight 1,000 yards deep and open to the southward.

Gull island, bearing 239° , distant 1 mile from Turks head, is 73 feet high, and the outer of a cluster of cliffy islets. Being of the same color as the mainland, it is not easily distinguished.

Several shoals which lie within a little over a mile westward and southward of Gull island, with depths of 4 to 7 fathoms over them, break heavily in bad weather.

Red island, westward $1\frac{1}{4}$ miles from Gull island, is about $\frac{3}{10}$ mile long in a northerly and southerly direction, with a width varying from 1,000 to 300 yards, and it is divided into two parts by a low neck of land, the inner a wooded cone 377 feet, and the outer a flat-topped hill with a white summit 326 feet high. Its outer cliffs are red.

This island divides a deep bay into two parts, Northeast arm, which extends $1\frac{1}{4}$ miles, and Northwest arm, $1\frac{1}{2}$ miles.

Northeast arm has deep water and affords no shelter for 1 mile within its entrance; then a channel 50 yards wide leads to an inner basin, named Doctor harbor, 750 yards long and 150 yards wide, with sheltered anchorage for small craft in 4 to 5 fathoms water.

Red Island harbor, a widening of the channel separating the island from the mainland, is 500 yards long and 200 yards broad; it can be entered only from the eastward through a channel 30 yards wide, and it is suitable for fishing craft.

Northwest arm.—Cross rocks narrow the channel between them and Red island, at $\frac{1}{2}$ mile within the entrance of the arm, to 200 yards, with a depth of $5\frac{1}{2}$ fathoms; inside these rocks there is anchorage for small craft in 8 to 9 fathoms water, good holding ground.

Bay de Loup, or Wolf bay [Lat. $47^\circ 37' 30''$ N., Long. $57^\circ 33' 45''$ W.], extends northeastward $2\frac{3}{4}$ miles from its entrance between Bay de Loup point and Kings Head point, situated nothwestward, about 1,700 yards. The shores of the bay are precipitous, with deep water close-to, and there is no anchorage until Blow-me-down, a steep bluff, 513 feet high, on the northern shore at about $\frac{3}{4}$ mile from the head, is passed, when there is good shelter in 10 fathoms water, and the depth gradually decreases to $4\frac{1}{2}$ fathoms toward the head. The most convenient anchorage is off the houses at the mouth of Seal brook, a small stream situated northeastward about 800 yards from Blow-me-down.

Water.—Excellent water is obtainable in bay de Loup.

Kings harbor, immediately westward of Kings head, the western entrance point of bay de Loup, is an inlet extending northeastward 1,050 yards, which affords anchorage in 9 fathoms of water at 150 yards off its southern shore. Kings Harbor brook flows into the western part of the harbor, and a bank extends eastward 250 yards from its mouth.

The Ha ha is an inlet stretching 1 mile in a westerly direction to the northward of Aldridge and Richards heads, and it is clear till within 100 yards of its head, near which there is anchorage for small vessels in 10 to 12 fathoms water, but exposed to easterly winds.

Burgeo is a considerable village on the eastern side of Grandy island; it has several conspicuous houses, and a wooden church with a short spire.

Communication.—The Newfoundland Railway steamer from St. Johns calls here weekly during summer and autumn.

There is a telegraph station at Burgeo.

Supplies can generally be obtained at Burgeo in small quantities, and water from bay de Loup.

Smalls island is the southern of the group of islets and rocks off the eastern coast of Grandy island, and between it and the island is a good harbor for boats and small vessels, with 11 feet of water in it. There is a flagstaff on the island.

Rock—Beacon.—A rock, bearing 65° , distant 300 yards from Furber point, the southern point of Grandy island, covers 1 foot at high water. There is a beacon on it.

Ship dock is a small cove westward of Furber point and between that point and Franks island, around which are situated the wharves and warehouses of the principal trading firm at Burgeo; the agent's double-storied house shows conspicuously from all directions, and there is a flagstaff on Furber point.

Mercer point, the southwestern end of Grandy island, is a bluff dark point forming the southern point of Mercer cove, an inlet extending northwestward 800 yards into Grandy island. The cove forms two basins; it is crossed by a bridge, and a low neck of land separates it from Long reach to the southwestward. A small islet lies in the entrance northeastward of Mercer point, and small vessels shelter in the outer basin.

The Sandbanks.—Grip head, westward, distant $1\frac{3}{10}$ miles from Mercer point, is 152 feet high, and close southward of it are the Sandbanks, 70 feet high; Sandbanks point, about 850 yards farther southward, was formerly their southern end, but it is now an island and there is a passage with a depth of about $1\frac{1}{2}$ fathoms between the Sandbanks and Sandbanks point.

Sandbanks Point island lies close southeastward of Sandbanks point; some rocks, always above water, lie southward of Sandbanks point, with $3\frac{1}{2}$ fathoms of water close to them.

Beacon.—A white rectangular beacon stands on Sandbanks Point island, and is conspicuous.

Burgeo islands [Lat. $47^{\circ} 36' 20''$ N., Long. $57^{\circ} 36' 33''$ W.], a numerous group of islands and rocks, are composed of Laurentian gneiss, and show white where bare, excepting Round and Harbor islands, which are composed of dark micaceous gneiss. Only the important islands are described herein.

Boar island, the northeasternmost of the group, and situated southwestward, about $1\frac{1}{4}$ miles from Bay de Loup point, is 201 feet high. It is divided by a marsh; the southern or higher portion is wedge-shaped, and shoals, with 2 fathoms of water over them, extend nearly 200 yards from the southeastern point and about 100 yards from the northeastern point.

Light [Lat. 47° 36' 12" N., Long. 57° 35' 13" W.].—A square lighthouse, 47 feet high, rising from the gable of a dwelling, and painted white with red roofs, on the summit of Board island, exhibits, at 207 feet above high water, a fixed red light which should be seen seaward over an arc of 270° from a distance of 11 miles in clear weather.

Cuttail island, southwestward of Boar island and separated from it by a channel 250 yards wide, that requires local knowledge for its navigation, is 140 feet high, and its southeastern coast has bare, steep slopes.

Venils island, southward of Cuttail island and separated from it by a channel 150 yards wide, with foul ground stretching from both sides which requires local knowledge for its navigation, is 165 feet high.

A cove indenting the southeastern side of Venils island for 200 yards affords good sheltered anchorage for small craft in 3½ fathoms of water.

Rencontre island, southwestward 300 yards from Baggs island, is the highest of the Burgeo group; its western end rises to a conspicuous truncated cone, 269 feet high, covered with dark foliage.

Gull island, situated ¼ mile eastward of Rencontre island, is a bare rock 50 feet high, and steep-to on its eastern side, but foul ground extends 150 yards off its western side.

A rock, about 6 feet high, lies 150 yards northwestward of Gull island, and a shoal, with 13 feet of water over it, between the end of the foul ground southwestward of Gull island and Rencontre rock.

Rencontre rock, bearing 102°, distant 350 yards from the southern point of Rencontre island, has 7 feet of water over it.

Morgan island, the northeastern end of which lies westward distant nearly ⅓ mile from Boar Island lighthouse, is about 1,400 yards long in a northeasterly and southwesterly direction, 350 yards wide, 138 feet high, moss-covered and undulating.

Shoal water fringes its northern and northwestern coast; the southwestern coast is bold-to; the southern coast is encumbered with rocks and shoals, and a shoal extends 50 yards off the northeastern point of the island. There are two coves on the southern side, with the houses of fishermen around them.

Little Barasway is a large bay which nearly all dries, with First and Aaron arms, two inlets, extending to the eastward. The entrance is nearly dry at low water, and in it is a conical islet.

The canal, a cutting connecting Little Barasway with Grandy brook, is available for the fishermen's small boats from three-quarters flood to a quarter ebb.

Little Gut, northward 700 yards from Little Gut head, was an entrance to Grandy brook, but it is now closed.

Grandy brook is an arm of the sea extending from Little Gut 2½ miles inland to the fresh-water brook at the head.

The land eastward of Grandy brook consists of conical hills and mounds, partially covered with stunted trees or whitened by former fires, while that westward of the brook consists of ranges of hills with cliff-faced summits and smooth, mossy slopes.

Norman head, the northern entrance point of Little Gut, is a bare-topped mound 93 feet high, with a spit of shingle extending from its base into Little Gut. Westward of this head a long shingle beach, 10 feet high, with a grassy mound as its western end and two mounds at

short distances eastward of that end, forms the shore of Barasway bay and separates it from Big Barasway, a large shoal inland bay containing several islands. The entrance to Big Barasway at the western end of the beach is encumbered by rocks, and it is rarely used even by local small craft.

Barasway bay [Lat. $47^{\circ} 37' 15''$ N., Long. $57^{\circ} 44' 20''$ W.], between Cornelius island and Barasway point, that lies $4\frac{1}{2}$ miles to the westward, has general depths of 13 to 17 fathoms across its mouth, but islets, rocks, and foul ground make the bay useless as an anchorage, and in heavy weather it appears a mass of breakers.

Barasway point is the southwestern end of a low promontory extending from the slopes of Father Hughes hill, 398 feet high, which is situated $1\frac{2}{10}$ miles northward from the point and appears as a cone from seaward; from it a flat range of hills stretches to the interior. The moss and stunted growth that cover this hill are darker than the surrounding country, and tend to make it conspicuous even in misty weather.

A rock, nearly 200 yards distant from the southern side of the promontory just westward of Doctor harbor, covers 1 foot at high water; and a rock, bearing 158° , distant 300 yards from the point, has 6 feet of water over it.

The coast from Barasway point to Connoire head, west-northwestward, distant $5\frac{1}{10}$ miles, is foul, with several small coves. The outer rocks are generally marked by breakers, and may be approached from seaward to $\frac{1}{4}$ mile. Connoire Head hill completely open westward of Wreck island, the low green island next eastward of it, bearing 309° , leads southwestward of all the shoals.

Middle brook.—Anchorage can be obtained off Middle brook, between Green island, at 2 miles west-northwestward of Barasway point and off which are Green Island rocks, a small cluster above water, and Baring island, reddish, white, rocky, and 53 feet high, about $\frac{3}{4}$ mile farther northwestward, in 12 fathoms of water, but it is open southwestward. A few houses stand on the western entrance point of Middle brook, at the head of the anchorage.

Connoire head [Lat. $47^{\circ} 38' 55''$ N., Long. $57^{\circ} 54' 45''$ W.] is conspicuous from its isolation and a white rock at its base; the dark stunted trees that crown its summit are 175 feet above high water.

Connoire bay, the entrance of which has a width of $2\frac{2}{10}$ miles between Connoire head and Muddy Hole point, extends northward $2\frac{1}{2}$ miles with a breadth of $1\frac{1}{4}$ miles to Mid head, where it branches into Northeast and Northwest arms. Northeast arm extends in a curve northeastward $2\frac{1}{4}$ miles, and Northwest arm northward $3\frac{1}{2}$ miles, but in this arm the depth of water is less than 5 fathoms over its whole extent, and at half tide only boats can enter the shallow portion which begins at 1 mile within Mid head.

The only shoal in the outer part of Connoire bay is a rock with 3 fathoms water over it, situated 300 yards from the eastern shore of the bay and $1\frac{6}{10}$ miles within Connoire head. Northeastward of Connoire head the land slopes smoothly from hills that attain a height of 514 feet and are covered with brown moss. Mid head terminates in a series of peaked hills, and its highest part, on the northwestern shore of Northeast arm, is 689 feet high.

Northeast arm affords good shelter to vessels drawing 18 feet or less water, anchorage being taken by the lead and according to the

size of the vessel. A sand bank extends from the northwestern shore, just within the point where the arm narrows, and a rock, with 12 feet water on it, lies in mid-channel off Billiard cove, a small bight on the eastern shore.

Muddy Hole point is the end of a conical hill 97 feet high, and the apparent southern termination of a ridge extending from a hill with a sharp peak 246 feet high, which bears 34° , distant $1\frac{9}{10}$ miles from the point, and slopes northwestward to Gull pond, a salt-water lagoon. Cow-house hill, northward about 2 miles from Gull pond, is 855 feet high, and the highest land near the sea in this locality. Round hill, northward about $2\frac{3}{4}$ miles from Muddy Hole point, is 570 feet high. Rocks extend southeastward and southward 800 yards from Muddy Hole point; the summit of Baring island in line with the southern end of Wreck island, bearing 99° , leads southward of them.

Muddy Hole bay is open southward, and has a small boat cove in its northeastern corner.

Otter Point settlement, with a population of about 50, is situated on the northern side of Duck island, a small island at the head of a rugged bight immediately northwestward of Otter point.

Local knowledge is necessary to approach this settlement, or the anchorage between it and the mainland northward of it, and only vessels drawing 12 feet or less water can enter it from the eastward. The flagstaff of the settlement is all of it that is visible from seaward.

Captain island, northward, $1\frac{1}{4}$ miles from Couteau Colombier, is about $\frac{3}{4}$ mile long in a northerly and southerly direction, $\frac{1}{2}$ mile wide, and it rises in two hillocks, the northern being 216 feet high. The whiteness of the rock of this island where bare, and the darkness of the vegetation which covers the remainder, are noticeable. Its features are much diversified, and there is a white stripe on one of the hills on its northern side.

Rock and shoals extend westward 1,200 yards from this island. The passage between it and the mainland northward is 200 yards wide, with a depth of $4\frac{1}{2}$ fathoms water in the fairway.

Couteau bay [Lat. $47^{\circ} 40' 10''$ N., Long. $58^{\circ} 03' 00''$ W.] extends northward $2\frac{3}{4}$ miles to Couteau brook entrance. The entrance to the bay is almost blocked by islets and rocks, but there is one safe, though narrow, passage through them.

Couteau Flat rocks, 6 and 10 feet high, respectively, and the southernmost of those above water off Couteau bay, are surrounded by submerged rocks and shoals for a short distance. Copped Duck rock, 197° , distant 1,300 yards from the 6 feet high Flat rock, and the outer shoal off Couteau bay, has 5 fathoms water over it. Connoire head, open southward of Shag island, bearing 85° , leads southward, and the eastern end of the land on the northwestern shore of Couteau bay, open westward of the 10 feet high Flat rock, bearing 9° , leads westward of Copper Duck rock.

Cinq Cerf bay [Lat. $47^{\circ} 40' 30''$ N., Long. $58^{\circ} 05' 30''$ W.] lies next westward of Couteau bay, and is encumbered with islands and rocks. The dividing point between the two bays is foul seaward to White ground, the outer shoal, which is situated 900 yards south-southwestward of the point, and has $2\frac{1}{2}$ fathoms water over it.

Cinq Cerf islets lie eastward of the western entrance point to Cinq Cerf bay. Their seaward coasts consist of steep gray cliffs.

The highest and southwesternmost islet is 84 feet high, while Shag islet, the northeasternmost, is a bare white rock 26 feet high. There is a very small settlement round a cove in the mainland, close north-westward of these islets.

Big Sunker, the southwestern of a group of rocks lying off Cinq Cerf islets, bears 284° , distant 1 mile from Flat island, and has 15 feet of water over it. Shag island, off Otter point, open southwestward of Flat island, bearing 100° , leads southward; Baggs head well open southeastward of Shag islet, Cinq Cerf, bearing 7° , leads eastward; and Baggs head open northwestward of Shag islet, Cinq Cerf, bearing 26° , leads northwestward of this rock.

Three islands, westward about 2 miles from Cinq Cerf islets, are a cluster of three islands with two lower islets eastward of them, and several rocks and shoals around. The southernmost and highest is a round gray rock 46 feet high. Pigeon islet, bearing 268° , leads southward of the shoals off these islands.

Bad Neighbor rock, bearing 168° , distant $1\frac{1}{2}$ miles from the southernmost of the Three islands, is nearly awash at low water.

Grand Bruit harbor, $1\frac{1}{5}$ miles westward from Three islands, is only 200 yards wide, but it affords excellent sheltered anchorage for small vessels in 7 fathoms water. The houses of the village surrounding the harbor, a white schoolhouse on the slope of the hill above, and the large waterfall at the head of the harbor are visible from seaward. A line of rocky patches extends southeastward 450 yards from the southwestern end of the island forming the eastern entrance point of the harbor, and there is a least depth of 13 feet of water over them.

The Barasway, a large bight westward of Hares Ears, is almost filled with islands and rocks, and the passage between them requires a local pilot.

Roti Colombier, at the southwestern end of the islands off the Barasway, is a conspicuous bare conical rock 62 feet high. There are several rocks, both above and below water, between Roti Colombier and Jacques island.

Ireland island lies westward, distant 3 miles from Roti Colombier, and southward, one mile from the eastern entrance point to La Poile bay; a ledge extends eastward 600 yards from this island, with $1\frac{1}{2}$ fathoms water at its outer end.

Light [Lat. $47^{\circ} 37' 52''$ N., Long. $58^{\circ} 22' 13''$ W.].—A cylindrical lighthouse. 39 feet high, with a dwelling attached, both lighthouse and dwelling being painted red and white in horizontal stripes, on Ireland island, exhibits, at 67 feet above high water, a revolving white light, showing flashes which attain their greatest brilliancy every twelve seconds, and are separated by total eclipses; the light should be seen from a distance of 9 miles in clear weather.

La Poile bay [Lat. $47^{\circ} 38' 30''$ N., Long. $58^{\circ} 23' 10''$ W.] extends about north-northeastward 6 miles, with a general width of $1\frac{1}{2}$ miles to Dolman head and North Bay point; Northeast arm extends north-eastward $2\frac{1}{2}$ miles from south of Dolman head, and North bay extends northward $3\frac{1}{2}$ miles from North Bay point.

Northeast arm affords excellent anchorage, 1,600 yards long and 600 yards broad, in 10 to 13 fathoms water, mud bottom. The arm is clear of shoals at a short distance from its shores. Water can be taken from Rattling brook, near the head of Northeast arm.

North bay is shallow within its entrance, but anchorage may be obtained just outside in 12 fathoms water, gravel bottom. A telegraph wire crosses the head of the bay.

Little bay, on the west shore and bearing north-northwestward from the eastern entrance point of la Poile bay, extends inland $1\frac{1}{2}$ miles in a westerly direction, and affords anchorage, in a space about 350 yards across, off the fishing settlement in 10 fathoms water. Buoys are placed for warping vessels to the wharves.

Communication.—The Newfoundland railway steamer from St. Johns calls here weekly during summer and autumn, and there is a post and telegraph office.

La Poile harbor, the entrance of which bears northwestward from the eastern entrance point of la Poile bay, is 400 yards wide and 1,700 yards long, as far as Pig island, which lies in mid-channel; beyond Pig island it extends southwestward for $\frac{1}{2}$ mile in a narrow arm to its head.

This harbor affords anchorage in 11 fathoms of water at about 300 yards eastward of Pig island. There are a few houses on its southern shore.

Beacon.—A beacon stands on Beacon point, the southern entrance point.

The coast between la Poile bay and Garia bay, westward about 4 miles, is bordered by islands and rocks, which no stranger should attempt to pass inside of at any time, nor shoal the water to less than 50 fathoms at night.

Indian island, southeastward $\frac{1}{4}$ mile from the eastern entrance point of Garia bay, is 58 feet high, and there is a white cliff at its southwestern point.

Deer island, in Garia bay entrance, rises to a conical hill 68 feet high, and is covered with dark spruce. The northern coast of Deer island is generally foul. Islets and rocks extend southward $\frac{3}{4}$ mile from Deer island, the most prominent being Shag islet, which is a gray rock, 32 feet high, and Black rock, the southernmost, which is 12 feet high.

Garia bay [Lat. $47^{\circ} 38' 25''$ N., Long. $58^{\circ} 32' 00''$ W.] extends north-northwestward 3 miles and thence turns north-northeastward for 2 miles. The water in the bay is generally shallow, and the anchorage for large vessels is only 300 yards wide, but that for small vessels is excellent.

Wreck island, southward about $\frac{3}{4}$ mile from the western entrance point of Garia bay, is 35 feet high, and covered with grass; there are two rocky mounds near its northwestern end. Wreck island sunkeners are rocks that extend southward nearly $\frac{1}{2}$ mile from Wreck island; and Offer Gob rock, bearing 208° , distant $\frac{3}{4}$ mile from Wreck island summit, has 15 feet of water over it.

Hatchers cove, a small bight completely open to the southward, lies close westward of the entrance to Garia bay. The eastern part of the cove is full of rocks, but there is good anchorage for small craft in the remainder, in 6 to 11 fathoms water.

Little Garia bay is westward, about 1,200 yards from Hatchers cove, the eastern entrance point of the bay being Slammer point, which has the appearance of an island. Firmages head, a remarkable bluff, 180 feet high, is just within the eastern entrance point.

There is no shoal in this bay except close to the shore, but the water is deep, and it is completely open to the southward. A bar of flat rock, with 12 feet water over it, crosses the bay at $\frac{1}{2}$ mile from its head; within the bar is a basin with $4\frac{1}{4}$ fathoms in it, and a good anchorage for small craft. Large vessels anchor, sheltered from off-shore winds, in 13 fathoms water off Pigeon island, 40 feet high, close to the western shore, and just northward of Pillar rock, 35 feet high. Berry point, the western entrance point, is a low peninsula of red cliff with a small rock above water close to its southern side.

Seal islands are a group off Berry point.

Big Seal island rises to a sharp pointed hill 130 feet high, and is generally covered with grass and moss. Round island, close north-westward of it, is a sharp cone about 70 feet high, and Offer Seal island, close southwestward of Big Seal island, is 54 feet high, with Black rock, 6 feet high, 200 yards off its southern side.

The coast westward of Seal islands is bordered by rocks and shoals, and except with local knowledge, vessels should not close the land northward of the line of the summit of Wreck island in line with Black rock of Offer Seal island, bearing 71° .

Bay le Moine [Lat. $47^\circ 37' 00''$ N., Long. $58^\circ 39' 00''$ W.] entrance is west-southwestward about $2\frac{1}{4}$ miles from Seal Island head, and the bay extends north-northeastward 4 miles; there is good anchorage at its head.

Fish head, the western entrance of bay le Moine, is a steep bluff at the south-western end of a hill which is 231 feet high, and faced by gray cliff.

Harbor le Cou lies westward of Fish head, and consists of a cove to the southwest, and a basin to the northeast. A settlement of some 225 people is situated round the southwest cove.

The coast between harbor le Cou and Rose Blanche point (said to be a corruption of Roches Blanches), which bears 233° , distant $1\frac{1}{2}$ miles from Fish head, is a whitish gray rock, and generally steep. Wash rocks, which dry 4 feet, lie a little more than 100 yards from the coast at 1,600 yards northeastward of Rose Blanche point.

Light [Lat. $47^\circ 35' 48''$ N., Long. $58^\circ 41' 30''$ W.].—A granite lighthouse, 40 feet high, surmounting the corner of slate-roofed buildings, with one side and one end painted red and white in vertical stripes, on the eastern head of Rose Blanche point, exhibits, at 95 feet above high water, a fixed white light, that should be seen over an arc of 169° between the bearings 62° and 253° , from a distance of 11 miles in clear weather.

The coast from Rose Blanche point trends north-northeastward for $\frac{1}{2}$ mile; then turning westward and southward, it forms, with two small bays at its head, Rose Blanche harbor.

Cains island lies immediately westward of Rose Blanche point, and is almost connected with it by rocky islets; westward of the island is the entrance to Rose Blanche harbor. This island is steep-to off its western point and along its northwestern side; there are a few houses and fishing stages on its eastern side, where it is separated from the mainland by a narrow bay, almost a strait.

Fog signal.—A fog horn, placed on the southwestern point of Cains island, gives two blasts every two minutes, thus:—blast, six

seconds; silence, fifteen seconds; blast, six seconds; silence, ninety-three seconds, during thick or foggy weather.

The engine house is square, flat-roofed, and painted in black and white horizontal bands; the keeper's dwelling is square, white, with a flat black roof, and there is a similar building close to it.

Light [Lat. $47^{\circ} 36' 00''$ N., Long. $58^{\circ} 41' 55''$ W.].—A fixed red lantern light is exhibited from the roof of the engine house.

Rose Blanche harbor is tolerably easy of access and affords sheltered anchorage in 8 to 9 fathoms of water, sand bottom; but the space is very confined, and a vessel over 200 feet in length should moor.

Rose Blanche village, situated principally on the peninsula which forms the western side of the harbor, has a population of about 500, all of whom are, directly or indirectly, dependent on the fishing industry. There is a church, the spire of which is a good mark from the westward; a school, and a resident medical officer.

Rose Blanche shoals are several rocky heads, the outer of which bears 221° , distant 1,900 yards from the lighthouse, and has over it a least depth of 2 fathoms; north-northwestward 300 yards from this shoal is a patch of $2\frac{1}{4}$ fathoms, and northeastward 600 yards from it are three other patches with less than 3 fathoms of water over them; all break heavily.

Shag rocks, west-southwestward, distant $1\frac{1}{4}$ miles from Rose Blanche point, are a group of rocky ledges, the highest of which is 17 feet high. To the southeastward of this ledge are some rocks which dry 5 feet, and at 400 yards from the highest ledge there is a rock with $2\frac{1}{4}$ fathoms over it. Bearing 40° , distant 600 yards from this rock, is a ledge on which the depth is from 2 to 3 fathoms. These rocks break heavily in any swell, but they are steep-to, and in calm weather should be approached with caution.

The coast from inside Hopkins island trends, generally, west-southwestward to a bluff point forming the eastern entrance point to Mull Face bay. A rocky ledge extends 800 yards eastward, or toward Duckling islet, from this point, and near its eastern end there are some small rocks which dry at low water, making a good mark for the northern limit of the channel inside Duck island. Between Duck island and the bluff point mentioned above there are two rocks with 3 and $3\frac{1}{2}$ fathoms of water over them.

Yankee rocks, immediately westward of the entrance to Mull Face bay, are a cluster of rocks and ledges, the highest of which is 11 feet high; at 200 yards eastward from the highest rock there is a pinnacle rock which dries at low water.

The coast from Mull Face bay trends generally westward to Barasway bay, which is much encumbered by rocks and shoals. In its northwestern corner there is a conspicuous waterfall, formed by a stream which flows from several large ponds between the hills.

The coast from Barasway bay, trending still generally westward, is cliffy and fairly steep-to for $\frac{3}{4}$ mile to White head, which is conspicuous. Half a mile westward of this the coast is fronted by a group of small islands, inside of which there is a fishing village named Bazel. There is a narrow passage between these islands and the mainland with 3 to 4 fathoms of water in it.

Harbor island is the largest of a group of islands and ledges which fronts the coast in this locality. Together with Bakers island and some others it forms the sheltered anchorage named Grandy sound.

These islands are of moderate height, and some of them are covered with grass, on which a few sheep, belonging to the villages in the vicinity, are left to feed. One of these villages, consisting of five or six houses, is situated on a small island just within Grandy passage.

Westward of Harbor island there is a deep passage into Grandy sound, but, like the others between these islands, it is narrow, and there are some rocks off its entrance.

Grandy sound has good and sheltered anchorage in its north-eastern part in 6 fathoms of water, mud bottom, but the entrances are narrow, and intricate, and unsuitable for large vessels. A stream of moderate size runs into the northwestern corner of the sound, and boats ascend it for about $\frac{3}{4}$ mile to a stony bar. From the large valley above this the local fishermen procure timber and spars of considerable size.

The coast from Stickland point bends sharply northeastward and forms God bay, which is nearly $1\frac{1}{4}$ miles in length; a small stream flows from a valley between the surrounding hills into its head; and a stream, from which good water can be taken, runs into its northwestern corner, and inland of this there is a pond of considerable extent.

Burnt islands [Lat. $47^{\circ} 35' 15''$ N., Long. $58^{\circ} 53' 35''$ W.] is the name given to the numerous islands and rocks that front and partly fill God bay. On the largest island, which is just within the entrance of the bay, there is a settlement, which, together with Stickland village, has a population of about 300, all connected with the fishing industry. Two or three cargoes of dried codfish are annually sent from this place to Europe.

Communication.—The coasting steamers do not call at Burnt islands, but there is telegraphic communication.

Burnt Islands harbor affords good and sheltered anchorage for vessels of moderate size, but even with a small vessel no attempt should be made to enter without a pilot, for the channels are not easily distinguished from seaward, and the numerous rocks give but little room for maneuvering.

Coney bay extends east-northeastward $1\frac{1}{4}$ miles on the northwestern side of Coney head peninsula; to enter it, after having passed the outer reefs, keep about 300 yards off Coney head to clear a rock lying off it, then cross to the northern shore, keeping it aboard till the head is reached, and anchor in 4 fathoms of water, but from 800 yards inside of the entrance to the head there are rocks lying off both sides of the bay.

Otter bay, or Baie de La Loutre, is about $\frac{1}{2}$ mile westward of Coney bay; its entrance is encumbered by rocks.

Caution.—A pilot is necessary to enter either Coney bay or Otter bay.

Dead Islands harbor (also known as "Morte harbor" or "Seal cove") is westward of Otter bay and northward of Dead or Morte islands, a group of islands and rocks with shoals extending more than $\frac{1}{2}$ mile southward and westward.

It affords anchorage for small vessels in a space 1,000 yards long and 300 yards broad, approached by three passages—Eastern and Middle passages, which are too shoal and intricate to be taken without a pilot, and Western passage, which is 100 yards wide at its nar-

rowest parts, and available for vessels drawing less than 20 feet of water.

Light [Lat. $47^{\circ} 34' 40''$ N., Long. $58^{\circ} 58' 30''$ W.].—A white wooden frame on the western end of Pitman island, which is on the eastern side of the Eastern passage at about 900 yards within its entrance, exhibits a fixed green light at 26 feet above high water.

The coast, westward of Dead islands, is low, and foul ground extends $\frac{1}{2}$ mile off it. Black shoal bearing 223° , distant 600 yards from Black rock, and 94° , $2\frac{1}{16}$ miles from Channel Head lighthouse, has 15 feet of water over it.

Little bay, 1 mile northeastward of Channel head, is a narrow creek affording shelter for small craft and may be entered by bringing the southeastern shore to bear 52° and steering for it on that bearing; when the bay is entered, anchor as convenient.

Port aux Basques [Lat. $47^{\circ} 33' 56''$ N., Long. $59^{\circ} 07' 45''$ W.], westward $1\frac{1}{2}$ miles from Little Bay head and east-southeastward $7\frac{1}{2}$ miles from cape Ray, is entered between Shoal point to the northward, and Channel head to the southward; the land around it is barren and rocky in appearance, but the anchorage, nearly $\frac{1}{2}$ mile long and 300 yards broad, with 8 to 11 fathoms of water, mud bottom, is good for moderate-sized vessels. The fishing for salmon and sea trout at port aux Basques is excellent.

The southwestern shore of port aux Basques is divided by a small projection into two coves, both of which are shallow; and a government wharf, alongside which there is a depth of 15 feet at low water, extends from the northwestern side of the projection. When going alongside this wharf, do not enter that part of the cove immediately southwestward of the wharf, as the water shoals rapidly. At the head of this cove is a small islet, just above high water, on which is a ringbolt, to aid vessels when hauling into the narrow anchorage between the foul ground off this islet and Pancake rock.

Light [Lat. $47^{\circ} 33' 50''$ N., Long. $59^{\circ} 07' 11''$ N.].—A circular white lighthouse 29 feet high, with an attached dwelling, having white sides and a red roof, on Channel head, exhibits, at 101 feet above high water, a fixed red light, that should be seen from a distance of 15 miles in clear weather.

A red brick building stands 30 feet northward of the lighthouse.

Fog signal.—A fog signal house having white sides stands about 65 feet southward of the lighthouse, and is connected with it by a covered way. A diaphone horn, projecting from the southern end of this house, and worked by compressed air, gives one blast about every two minutes, thus: Blast, three and one-half seconds; interval, one hundred and fourteen seconds, during thick or foggy weather.

Channel, a large village with a population of 723, situated on the mainland, just northward of the island, whose eastern end forms Channel head, contains three churches and a windmill; this village is conspicuous from seaward.

Buoy.—A red spar buoy is moored in $3\frac{1}{2}$ fathoms of water at the southwestern end of the shoal extending southwestward from East Baldwin rock.

Rock.—A small rock, bearing 268° , distant 250 yards from East Baldwin, has 10 feet of water over it, and a shoal with $3\frac{1}{2}$ fathoms of water extends southward nearly 65 yards from the rock.

Buoy.—A white spar buoy, with a white St. Andrew's cross topmark, is moored in $3\frac{1}{2}$ fathoms at the southern end of the shoal extending southward from this rock.

West Baldwin, 150 yards off the southwestern shore of the harbor, $\frac{1}{2}$ mile inside of Channel head, is a rock 50 yards in diameter the shoalest part of which has 1 foot on it at low water. The passage between it and the shoal extending from the rock westward of East Baldwin is 80 yards wide.

Buoy.—A black spar buoy, with a black conical topmark, is moored in $3\frac{1}{2}$ fathoms at the northeastern end of the shoal water off West Baldwin rock.

Pancake rock, the eastern end of foul ground extending from the shore of the harbor southwestward of Road island, is about 130 feet in diameter and awash at low water. The channel between the shoal off this rock and the foul ground off Road island is only 90 yards wide, and it is necessary, therefore, to keep on the marks when passing through it.

Buoy.—A black cask buoy is moored at the northeastern end of Pancake rock.

Flagstaff hill, 222 feet high, and the highest land in this locality, is surmounted by a large stone cairn, with a wooden triangle at the top.

Leading lights [Lat. $47^{\circ} 34' 28''$ N., Long. $59^{\circ} 07' 57''$ W.].—A white pyramidal tower, 22 feet high, on the southwestern end of Road island, exhibits an intermittent white light, thus: Light, one and a half seconds; eclipse, one and a half seconds.

A fixed red light is shown from the northern and western sides of the lantern and is visible over the harbor, but not from seaward.

A white pyramidal tower, 15 feet high, on the land, bearing 300° , distant 490 yards from the preceding lighthouse, exhibits at 81 feet above high water an intermittent white light, thus: Light, one second; eclipse, one second.

Beacons.—Two beacons with diamond-shaped topmarks stand on the shore northwestward of Pancake rock; and two beacons with circular topmarks stand, one on the western end of Woody island, and the other on the northeastern shore of the Bottom of port aux Basques, the narrow inlet northwestward of Woody island.

Caution.—When the presence of ice renders it necessary, the buoys in port aux Basques are taken up.

Settlement.—The settlement at port aux Basques consists of a few wooden houses, a railway station, and some sheds for the storage of goods; it may, however, become a place of importance.

Communication.—There is a railway to St. Johns. Steamers run three times a week between port aux Basques and Sydney, Cape Breton island, in connection with the trains; steamers also run weekly to St. Johns, and fortnightly to Halifax via Bras d'Or lakes, Cape Breton island. The steamers go to the railway wharf which lies along the mainland, southwestward of Woody island.

There is telegraphic communication, and both the Anglo-American Telegraph Company and the Newfoundland government have telegraph offices here.

Telegraph cable.—A telegraph cable was laid between port aux Basques and Canso, Nova Scotia, in 1905.

The coast between Channel head and Enragée point, $4\frac{1}{2}$ miles to the west-northwestward, has a group of islands and rocks and some foul ground lying off it. The islands should not be approached by large vessels within the distance of 1 mile.

Grand bay is available for vessels drawing less than 9 feet of water, and affords perfectly sheltered anchorage in 2 to 4 fathoms of water; it is entered through a narrow channel northeastward of the preceding anchorage by keeping the eastern shore aboard.

Enragée point is a low point surrounded by rocks. The coast from it to Cape Ray, which is distant about 4 miles in a northwesterly direction, consists of low sand hills facing salt water lagoons, and should not be approached by large vessels within the distance of 1 mile.

Cape Ray [Lat. $47^{\circ} 36' 55''$ N., Long. $59^{\circ} 18' 00''$ W.], the southwestern extremity of Newfoundland, is about 50 to 160 feet high, but at about 3 miles north-northeastward of it Table mountain rises abruptly to the height of 1,700 feet. Cook stone, 1,570 feet high, is a small peak at the southwestern end of the mountain and at about $\frac{1}{10}$ mile farther southwestward is Sugarloaf hill, conspicuous, conical, and 800 feet high. Two smaller conical hills lie between Sugarloaf hill and the sea.

Light [Lat. $47^{\circ} 37' 00''$ N., Long. $59^{\circ} 18' 00''$ W.].—A white octagonal tower with a red lantern, 75 feet high at 217 yards within the western extreme of Cape Ray, exhibits at 127 feet above high water a flashing white light, which shows one group of three flashes every fifteen seconds, and should be seen from a distance of 17 miles in clear weather.

A white dwelling and outbuildings, with red roofs, are situated near the lighthouse.

Fog signal.—A diaphone horn, worked by compressed air, at a fog signal house situated on the shore at Cape Ray, gives one blast of five seconds' duration every minute during thick weather, fog, and snowstorms. The fog signal house is a white building with a red roof and a high brick chimney.

Wireless telegraph station.—A wireless telegraph station has been established at Cape Ray lighthouse by the government of Canada and it is operated for the Marine and Fisheries Department of the Dominion by the Marconi Wireless Telegraph Company, Limited.

St. Paul island [Lat. $47^{\circ} 12' 30''$ N., Long. $60^{\circ} 09' 00''$ W.], in Cabot strait, the main entrance to the gulf of St. Lawrence, between the southwestern extremity of Newfoundland and the northern extremity of Cape Breton island, is nearly 3 miles long and 1 mile broad. It is composed of primary rocks, principally mica slate, dipping at an angle of about 45° to the southward. Its northern point is a small detached rock (although it appears connected from the sea), separated by a very narrow channel from a peninsula, about 400 feet high, which, together with the isthmus joining it to the body of the island, is so precipitous as to be nearly inaccessible. The remaining greater part of the island is also precipitous toward the sea, and it rises in two parallel ranges of hills, that on the eastern coast being the higher, and attaining an elevation of 500 feet.

A valley runs between these hills, and in it are two ponds, at some 250 feet above the sea. These supply a stream, which is about 6 feet wide and flows into the sea in the southern part of Trinity cove. Its

water is of a yellowish-brown color, but it is wholesome and tastes good. There are several other much smaller streams of water, one of which runs into Atlantic cove. Trinity cove is on the western, and Atlantic cove on the eastern side of the island, both being nearly 1 mile from its southern point, and they afford the only shelter for boats and the only good landing on the island, which is easier of ascent from them than at any other part. The island is partially wooded with dwarf and scrubby spruce trees, useless, except for fuel.

The island belongs to the province of Nova Scotia.

Half a mile off the island the water becomes deep, so that there is little or no warning by the lead in approaching it in foggy weather; although bold and high, many shipwrecks, attended with loss of life, have occurred upon it.

Beacons.—Two beacons with white circular tops are on the hill in the bight of the cove above the tide-gauge house, and in line, bearing 299° , lead well clear of Big Dick rock, a detached rock lying off the northern point of the cove, on which the sea breaks heavily. There are also two diamond-shaped white beacons about 70 yards eastward of the superintendent's house, which in line, bearing 344° , lead clear of the foul ground off the southern point of the cove, and indicate the best anchorage in 18 fathoms when their alignment intersects that of the two above-mentioned circular-topped beacons.

These beacons are intended for the guidance of vessels calling at the cove with supplies and mails as well as for small schooners and fishing vessels.

Lights.—There are two lighthouses on St. Paul island, one on the detached rock at its northern point and the other on its southern point.

North Point lighthouse [Lat. $47^{\circ} 13' 55''$ N., Long. $60^{\circ} 08' 20''$ W.], a white, octagonal, wooden tower 40 feet high, exhibits at 140 feet above high water a fixed white light, which should be seen from seaward a distance of 18 miles in clear weather, except on northerly bearings between 351° and 41° , when it is obscured by the island throughout an arc of 50° .

South Point lighthouse [Lat. $47^{\circ} 11' 20''$ N., Long. $60^{\circ} 09' 40''$ W.], also a white, octagonal, wooden tower 40 feet high, exhibits at 140 feet above high water a revolving white light which attains its greatest brilliancy every minute, and should be seen from seaward, from a distance of 18 miles in clear weather, except on southerly bearings between 132° and 250° , when it is obscured by the island throughout an arc of 118° .

Both the lights are extinguished whenever navigation is closed, without reference to any dates. The northern light is exhibited as late in the season as there are any vessels crossing to Newfoundland, and it is resumed in March if any sealing is being done in the neighborhood of the island, although there may be no other traffic.

Fog signal.—During thick weather or in snowstorms a steam fog whistle, on the southern point of Atlantic cove, is sounded for five seconds in every minute. The fog signal building is of wood painted brown, and the whistle is about 137 feet above high water.

Cabot strait, the principal entrance to the gulf of St. Lawrence, lying between the southwestern end of Newfoundland and Cape Breton island, is 55 miles wide.

The west coast of Newfoundland from cape Ray trends northward for about 9 miles to Larkin point, $\frac{3}{4}$ mile southeastward of which is the entrance to Little Codroy river.

Little Codroy river [Lat. $47^{\circ} 46' 00''$ N., Long. $59^{\circ} 17' 30''$ W.] can only be entered by boats, but small vessels anchor off the mouth during offshore winds. This is a capital river for salmon and sea trout fishing from June to September.

Great Codroy river [Lat. $47^{\circ} 49' 30''$ N., Long. $59^{\circ} 20' 00''$ W.], the entrance of which is $3\frac{1}{2}$ miles northward of Larkin point, can be entered by vessels, drawing 6 feet, at low water; it can be ascended $3\frac{1}{2}$ miles from the entrance, but a pilot should be taken, as there is no leading mark and the tidal streams are very strong. There is a conspicuous church steeple on the southern side of the river entrance.

Codroy village is situated on Beach point, a stony spit, and on the rising ground behind it, immediately northeastward of the middle of the island; landing can generally be effected on the western side of Beach point, sheltered by the island and the shallow bar extending between its northern end and the mainland.

A little southeastward of the village is the church, a large white building, without tower or spire, conspicuous from seaward. The population of this locality is about 500.

The coast between Codroy island and cape Anguille, about 2 $\frac{1}{2}$ miles northward, rises steeply to the western termination of the Anguille range. The higher portions of these slopes are covered with trees, but the lower portions show extensive clearings made by the settlers; the contrast between these clearings, with their large patches of dead timber, and the dark foliage of the trees above, and in some cases below them, is conspicuous from seaward.

Between the foot of the slope and the sea is a narrow strip of flat land, dotted here and there with the settlers' cottages, and immediately southward of cape Anguille is Shoal point, a small village.

Cape Anguille rises steeply from the sea to a sharp summit, 615 feet high, then the land within it, forming a small hollow, rises again to the range of high hills. The faces of the slopes on the western and southwestern sides of the cape have been cleared and are covered with grass and dead stumps of trees; but the northeastern side, and also the summit, are thickly wooded.

Light [Lat. $47^{\circ} 53' 51''$ N., Long. $59^{\circ} 24' 36''$ W.].—An octagonal tower of reinforced concrete surmounted by a red circular metal lantern, 97 feet high, at 100 feet within the coast line, northward of Shoal point, and 1 mile southward of cape Anguille, exhibits, at 115 feet above high water, a flashing white light, which shows groups of flashes every 10 seconds, thus: Light, 0.525 second; eclipse, 1.350 seconds; light, 0.525 second; eclipse, 7.6 seconds, and should be seen from all points of approach by water for a distance of 16 miles in clear weather.

A rectangular, wooden, double dwelling house, painted white, with a red hip roof, is situated at 128° , distant 288 feet from the lighthouse.

Fog signal.—A diaphone horn, situated in a rectangular wooden building with white sides and a red roof and a high brick chimney, at 174° , distant 208 feet from Cape Anguille lighthouse, is operated by compressed air, and sounds, every 90 seconds, 2 blasts each of $3\frac{1}{2}$ seconds' duration, thus: Blast, $3\frac{1}{2}$ seconds; silent interval, 5 seconds;

blast, $3\frac{1}{2}$ seconds; silent interval, 78 seconds, during thick and foggy weather.

St. George bay [Lat. $48^{\circ} 16' 00''$ N., Long. $59^{\circ} 00' 00''$ W.].—The land from cape Anguille trends northeastward for a distance of about 50 miles, and then curving to the westward for about 30 miles forms an extensive bay, the entrance to which, between capes Anguille and St. George, is $34\frac{1}{2}$ miles across. This bay is, with the exception of St. George harbor, situated at its head, entirely without sheltered anchorage, and, as westerly winds prevail, there is generally a swell rolling in, which, in gales, quickly increases to a very heavy sea.

Landing in the bay anywhere outside St. George harbor, with the exception of two small rocky bights on the northern side is impracticable during heavy westerly weather. This is especially the case on the southern shore, owing to the large number of ice-deposited stones and bowlders fronting the beaches. Numerous cottages and a few villages stand on the shores of the bay. The settlers are, with few exceptions, fishermen, and large quantities of cod and herring, as well as some salmon and lobsters, are annually caught; farming, in a primitive fashion, is carried on, but the crops are mostly confined to hay and to the small quantity of oats and potatoes required for themselves and their cattle, sheep, and horses.

The coast from cape Anguille to Lewis point, northeastward, distant about 16 miles, is composed of cliffs, reaching, in places, a height of 270 feet, and broken here and there by gullies extending from Cape Anguille mountains, which are immediately inland. It is steep-to and free from offlying shoals, the 10-fathom contour line, over its whole extent, being about 800 yards from the shore. The tops of the cliffs and the slopes of the mountains behind are densely wooded, and waterfalls mark the mouths of several streams, especially during spring.

At the entrance to some of the gullies there are small clusters of rude huts in which the fishermen live during summer. A narrow bush trail, originally cut for the benefit of persons shipwrecked on this inhospitable coast, runs parallel with the cliffs a short distance inland and connects cape Anguille with Ship cove.

Crabb brook is nearly 400 yards wide between the heads forming its mouth, but a stony spit projects 200 yards from the foot of the hill on the western side. Banks of stones, that dry at low water, extend nearly across the entrance, leaving a narrow, crooked channel, in which there is only 1 foot at low water.

The village is situated on both sides of the stream, just inside the entrance, but the larger number of houses is on the western side. The population is about 200, all of whom are engaged in fishing and farming.

There is a church, school, and post-office. Crabbs station of the Newfoundland railway is on the left bank of the river $2\frac{1}{2}$ miles from the mouth. There is a rough road to the southern side of St. George harbor.

Flat island [Lat. $48^{\circ} 26' 00''$ N., Long. $58^{\circ} 34' 00''$ W.] is a low bank of stones and shingle extending in a curve from Youngs cove to Harbor point, a distance of $6\frac{1}{2}$ miles in an east-northeasterly direction and forming with the shore of the mainland the shallow basin known as Flat bay. The width of this bank of stones is only about 50 yards in places, while toward the eastern end it is rather more than

$\frac{1}{2}$ mile. Long stretches of the bank are bare, but there are two extensive clumps of spruce trees as well as some small patches of scrub. Toward the eastern end of Flat island the deep water closes the shore, and eastward of Harbor point the 5-fathom line is only 60 yards from the beach.

Light [Lat. $48^{\circ} 27' 27''$ N., Long. $58^{\circ} 29' 10''$ W.].—A circular iron lighthouse, 35 feet high, and painted with three red and two white horizontal bands, stands, on a concrete base, at 100 yards within Harbor point, and exhibits, at 35 feet above high water, a fixed white light, which should be seen from a distance of 7 miles in clear weather.

St. George harbor is situated at the head of St. George bay; its entrance, between Harbor point on the south and Indian head on the north, is 3 miles across, and its extent to the entrance of St. George river is about 3 miles.

Sandy point settlement stands on the wider part of Flat island, near its eastern end, and it has a population of about 400 people, who are chiefly employed in the fishing industry.

Communication.—There is communication with Halifax by steamer monthly during summer. St. George station of the Newfoundland railway is situated $\frac{3}{4}$ mile southward of Turf point. The mail trains, which run three times a week between St. Johns and port aux Basques, stop at St. George. There is telegraphic communication.

There is hotel accommodation of a kind at St. George for about 12 people.

Indian river, or Little Barachois brook, lies $1\frac{1}{2}$ miles east-northeastward from Turf point. Indian pond, the space within the entrance, is of considerable size, but it quickly narrows between high wooded banks. A government ferry crosses at the mouth.

St. George river entrance, which is known as the Gut, lies $2\frac{1}{10}$ miles northward from Indian river entrance. The intervening shore is composed of low sand cliffs. During fine weather boats enter the river at low water, but the tidal stream runs strongly through, and there is generally more or less swell setting on the shore; during strong westerly winds it should not be attempted. There is a large lumber mill and some houses on the southern side of the entrance. The Newfoundland railway crosses the mouth of this river by an iron bridge, and the road to Stephenville is continued by means of a ferry across the river.

Indian head [Lat. $48^{\circ} 30' 00''$ N., Long. $58^{\circ} 31' 00''$ W.] is a remarkably clifty headland on the northern side of St. George harbor. The summit of the cliff is 180 feet high, but it gradually rises to a conspicuous conical wooded peak, 631 feet high, at $1\frac{1}{2}$ miles to the northeastward, from which wooded hills extend northeastward to a deep valley which separates them from the higher ranges inland.

Stephenville comprises the district extending northwestward about 5 miles from Indian head. There are numerous houses about the shores of the lagoon, northwestward of Indian head, and on the low slopes northwestward of it, as well as on the beach; and there is also a Roman Catholic church standing near the beach. A road passes round the lagoon to the ferry at St. George river, and also westward to Isthmus bay. At a short distance eastward of the church, Blanche river, a small stream, flows through the stony beach into the sea; the

country inland is of moderate elevation, thickly wooded where not cultivated, and has several ponds.

Isthmus bay [Lat. $48^{\circ} 33' 00''$ N., Long. $58^{\circ} 42' 30''$ W.] is the indentation in the coast just southwestward of Table mountain. It is about $1\frac{1}{4}$ miles across and $\frac{1}{2}$ mile deep. The soundings in the bay increase gradually from the shore to 6 fathoms, stone and gravel bottom, and though frequently used as an anchorage, the holding ground is uncertain, and there is a heavy swell during westerly to southwesterly winds. The stony beach at the head of the bay is about 50 yards across, and behind it is a shallow lagoon separated from East bay of Port au Port by another narrow stony beach. There are numerous cottages on both these beaches, as well as on the sloping ground over the western side of the bay. The Episcopal church and the post-office are on the eastern side, approached from the shore by a road up the steep sand cliff, which terminates the slope of Table mountain.

This district is locally known as the Gravels, and the population is about 100.

Communication.—Coasting steamers call at Isthmus bay occasionally during summer, and there is a short pier on the western shore for their convenience, but the postal communication is generally by road to Benoit station of the Newfoundland railway, which is situated about $1\frac{1}{2}$ miles northward of the mouth of St. George river.

Degras is a small settlement nearly 3 miles from March point; and Grand Jardin is a similar settlement $1\frac{1}{2}$ miles farther westward. The inhabitants of these two places, and also those at Petit Jardin, a few huts $\frac{3}{4}$ mile westward of Grand Jardin, are principally French, and engaged almost entirely in fishing.

Cape St. George [Lat. $48^{\circ} 28' 00''$ N., Long. $59^{\circ} 16' 00''$ W.].—From the land 960 feet high, at $1\frac{1}{4}$ miles north-northwestward of the village of Degras, dark wooded ridges, with occasional bare stony summits, fall toward cape St. George, a short distance from which the woods terminate and bare grassy slopes extend to the cliffs, which on the southern side of the cape are about 50 feet high. A pyramidal rock, connected with the western end of these cliffs by a low shelf, shows well from the southward; close to it is a low detached rock, and here the coast turns abruptly northward, rising in high perpendicular cliffs, which at a distance of $\frac{1}{4}$ mile from the cape are 225 feet high. Cape St. George is steep-to, and may be rounded closely, but a swell nearly always sets on to the shore, and the tidal streams are strong.

Cape Cormorant, north-northeastward $5\frac{1}{2}$ miles from cape St. George, is a perpendicular limestone cliff, about 700 feet high, from which the land rises in a steep slope to a somewhat conical summit 968 feet high, at a distance of $\frac{1}{4}$ mile inland.

Red island, northwestward, distant $\frac{3}{10}$ mile from cape Cormorant, is about 1,400 yards long in a northeasterly and southwesterly direction and 700 yards wide; its coast consists of red clay cliffs, rising, on the northwestern side, 292 feet above the sea.

The coast.—The western shore of the remarkable tongue of land known as Long point may be considered to begin at Clam Bank cove, from which place the extreme of the point is about $12\frac{1}{2}$ miles distant. Along this shore there are two small villages, known as Shoal cove and Black Duck brook, as well as a few detached cot-

tages of the settlers, who, in this locality, are chiefly of French descent.

Black Duck brook.—The village of Black Duck brook, nearly a mile northeastward of Shoal cove and $4\frac{1}{2}$ miles from Clam Bank cove, is principally situated on the shores of a sandy bight, where a sharp bend of the coast line in an easterly direction narrows the tongue, forming Long point, to about 600 yards.

The inhabitants, principally fishermen, are also owners of several head of cattle and sheep, for which they find pasture in the neighborhood. A lobster factory near the eastern end of the village is worked during the summer by a party of fishermen. There is a good road to Port au Port.

Port au Port [Lat. $48^{\circ} 40' 00''$ N., Long. $58^{\circ} 46' 30''$ W.] is the extensive area southward of a line joining Long point with Bluff head, the latter being a conspicuous cliffy headland of the mainland, bearing 98° , distant $5\frac{1}{2}$ miles from the point. The southwestern part of this area is divided by a projection terminating northward in Shoal point, into East and West bays, both of which are extensive.

The shores of this inlet are very sparsely populated, and the major portion of the inhabitants are settled on the southern shore of East bay and on Shoal point.

The eastern shore has a few settlers, and Long Point tongue, besides a few permanent residents, is visited in summer by fishermen.

Codfish are caught in large numbers about the bar and on the banks outside, and lobsters abound near Long point, as well as around the rocky coasts of Fox island and its vicinity. There are two factories for tinning lobsters at the Gravels, at the head of East bay, and one at Fox island, while there are ruins of others at Long point and Broad cove.

Ice.—Port au Port generally freezes early in January and the ice breaks up toward the end of April; during the winters of 1884–1886 the bay did not freeze, but this had not happened before for fifty years. Field ice never enters the port to a great extent, and under no conditions inside Fox island.

French bank lies southeastward about $\frac{1}{2}$ mile from Long point; within the 5-fathom contour line it is nearly circular, and about $\frac{9}{10}$ mile in diameter. The depths over it are generally from 4 to 5 fathoms, but there are two small heads on which the least water is 22 feet. One of these is near the middle of the bank, and the other near the southern end. There is a good passage, carrying 9 fathoms water, between this bank and the shore to the westward.

American bank is situated near the middle of the outer part of Port au Port, its northern end being separated from French bank by a channel 1,400 yards wide, with depths of 7 to 9 fathoms in it.

Within the depth of 5 fathoms the bank is $3\frac{1}{2}$ miles long in a northerly and southerly direction and $1\frac{1}{2}$ miles wide at its widest part, which is nearly 2 miles from the southern end. The general depth on the bank is 2 to 5 fathoms, rock, stones, and sand bottom, but there are the following patches on it.

West bay.—The shore from Rocky point, low and of sand and shingle, turns southward and southeastward for about 5 miles to South head of West bay, a rocky spur which divides the head of West bay into two parts.

A few settlers reside on this shore, in which there are several small streams, the largest being Victor brook, $1\frac{1}{4}$ miles from Rocky point, and Harry brook, $2\frac{1}{2}$ miles from South head; both afford good fishing. Inland to the southwestward thick wooded hills rise in long sloping ridges to heights of 700 and 800 feet.

Head harbor or Pic à Denis (locally Picadilly), the bight on the eastern side of South head, is about 2 miles in extent to the southward and $1\frac{1}{2}$ miles wide. Its western shores are rocky, the wooded hills behind rising steeply to a long ridge extending southwestward toward Lower cove in St. George bay. The head of the bight is low, and flat land extends a little distance back toward the hills; the eastern shore is a low bank of peaty soil. At the head of the bight and on the western side there are two small streams.

A settler's dwelling house, storehouse, and stage are situated on the western shore at $1\frac{1}{2}$ miles southward of South head, and limited quantities of meat, butter, and milk may sometimes be procured. The flat land at the head of the bay is cultivated to some extent; a road leads to Abrahams cove, and a path to Ship cove, in St. George bay, across the neck, between the hills, which are here comparatively low. There is also a road to West bay.

East bay extends about $6\frac{1}{2}$ miles to the southward, and is $5\frac{1}{2}$ miles wide; a considerable portion of it has depths of over 20 fathoms. The western shore of East bay from Shoal point trends southward for about $3\frac{1}{2}$ miles, in low peaty banks and a narrow sandy beach; thence it turns southeastward and after rising in slopes for about $1\frac{1}{2}$ miles, becomes rocky and forms, just westward of the Gravels, three small deep coves. Behind the foreshore the land rises in more or less wooded slopes to the summit of the ridge extending eastward from Pierways hill.

Boswarlis is a small settlement on the shore of East bay $3\frac{1}{2}$ miles westward of the Gravels; it has a few cottages and a schoolhouse. Limited supplies of such provisions as meat and butter may generally be obtained at the settlement during late summer and autumn.

The Gravels is the locality of the narrow neck separating Port au Port from Isthmus bay (page 279); a small steam vessel, belonging to one of the lobster factories, almost daily communicates with the several fisheries around the shores of Port au Port.

Immediately northeastward of Bluff head cliff, and on the face of the steep, wooded slope $\frac{1}{2}$ mile inland, are the houses of the workmen employed in the asbestos and chrome mines in the vicinity.

Anchorage—Buoy.—Temporary anchorage has been obtained off the northeastern end of Bluff head cliff in 8 fathoms, sand bottom. A large red buoy was moored here at about 400 yards offshore in 1898, and vessels calling for the chrome produced at the mines made fast to it.

Shoals.—There is a small shoal, with $4\frac{3}{4}$ fathoms of water over it, and 5 to 6 fathoms around, bearing 216° , distant $1\frac{1}{2}$ miles from the shoalest head of Round reef. A small patch, with 5 fathoms of water over it, bears 5° , distant 1 mile from the shoalest head of Round reef; there are depths of $5\frac{1}{2}$ to 6 fathoms between it and the reef, and from the patch there are depths of 6 to $4\frac{1}{4}$ fathoms northwestward toward Long ledge, but between this shallow water and the ledge there is a channel about $\frac{1}{4}$ mile wide with depths of 8 to 10 fathoms.

Long ledge is a narrow ledge of rock, with depths of less than 5 fathoms, extending northeastward $4\frac{1}{2}$ miles from its southwestern end, which bears 30° , $3\frac{1}{2}$ miles from Long point, the channel between having depths of 6 to 9 fathoms in it. The middle of the ledge lies $4\frac{1}{2}$ miles off the main shore; $3\frac{1}{2}$ miles from Shag island; and 2 miles from the shoalest head of Round reef. From its southwestern end the ledge is shoal for $2\frac{1}{2}$ miles. The middle part of the ledge, $1\frac{1}{2}$ miles in length, with an average breadth of less than 100 yards, dries at low water, and some small detached patches and bowlders on this are 3 to 6 feet high. Northeastward of the dry part, the ledge is shoal for the distance of $\frac{1}{2}$ mile.

Coal river entrance is at the southern side of a bight and close to the Friar, a remarkable detached rock, 77 feet high, at $1\frac{1}{2}$ miles northward of Rope cove. The coast between is a narrow stony beach, backed by low cliffs, behind which there are extensive marshy barrens with numerous small ponds and occasional clumps of trees.

On a sandy spit, projecting from the cliff on the northern side of the entrance, there are several houses, occupied by fishermen during summer. The fishermen living at the entrance carry their small boats to the rapids, about 2 miles up, during freshets, and are thence able to reach the ponds at any time for hunting and fishing.

Bear head [Lat. $49^\circ 00' 35''$ N., Long. $58^\circ 29' 35''$ W.] is very conspicuous from the southward, whence it has the shape of a crouching animal; a projecting rock on its summit resembles the ears, and a perpendicular cliff partially detached from the shore underneath, an up-turned snout.

The summit is 1,210 feet high, falling in a perpendicular cliff. The land within the range slopes rapidly down to Coal river valley, in which there are several ponds.

Devil head, north-northeastward, $1\frac{1}{2}$ miles from Vide Boutille cape, is 815 feet high and rises in black perpendicular cliffs, but the inshore slope of the headland is covered with grass, which shows in contrast to the dark cliffs.

South head is bold-to and rises in steep black cliffs; there are several pinnacles of light-colored rock at its base; the Monkey, the highest of these, is 110 feet high.

Bay of Islands [Lat. $49^\circ 10' 30''$ N., Long. $58^\circ 15' 00''$ W.].—This extensive inlet is very picturesque, on account of the high hills surrounding it, the steep high islands within, and the deep arms which trend from it.

Communication.—The Newfoundland railway skirts the southeastern part of the southern shore of Humber arm above Pleasant cove and at Birchy cove it connects with the weekly coasting steamer (see p. 37). A steamer from Halifax calls monthly at some of the ports in the Bay of Islands.

Ice.—The arms in the Bay of Islands generally freeze between December 20 and January 20, and the ice breaks up suddenly between April 20 and May 10; field ice clears away early or late in May, according to the season.

Fishing nets.—During autumn large numbers of herring nets are laid in the arms of the Bay of Islands and around Woods island. They are always laid parallel to the shore and usually in the depth of 18 feet. The fishery continued till the middle of January in 1907.

Guernsey (or Weebald island) [Lat. $49^{\circ} 11' 15''$ N., Long. $58^{\circ} 21' 30''$ W.], the southwestern island of the group lying in the entrance to the Bay of Islands, situated $1\frac{3}{10}$ miles northward of South head, is a little over a mile long, in a north-northwesterly and south-southeasterly direction, 1,400 yards wide, and 1,053 feet high; it is almost barren, but there are a few trees near its southern end, where is the best landing place in ordinary weather.

Tweed island (or French Island), separated from Guernsey island, lying to the northeastward, by a passage $\frac{3}{4}$ mile wide, is $1\frac{7}{10}$ miles long east and west, $\frac{1}{10}$ mile in greatest width, with a bare summit, 702 feet high, falling in black perpendicular cliffs on the northwestern and northeastern coasts.

Green island, or Woody island, northeastward 700 yards from Hen island, is 1,100 yards long, in an easterly and westerly direction, 900 yards in greatest width, and it rises to a round hill 415 feet high, with the summit covered with moss; there is a small cove on the southwestern side of this island, in which are several rocks.

Saddle island (formerly Shag rocks), northward $\frac{1}{2}$ mile from Green island, is a narrow island, rather more than 600 yards long, in a north-northeasterly and south-southwesterly direction, and divided into two rocky parts, connected by a narrow ridge; the southern part, 170 feet high, is round and covered with grass and a few stunted trees, while the northern is 163 feet high, bare and rugged, with a square pillar 150 feet high on its northern side, which is prominent on easterly or westerly bearings.

Gregory island, north-northeastward, nearly 2 miles from Saddle island, is about 600 yards long in a curve and 245 feet high.

Brandies rocks, a shoal 250 yards in diameter, the middle of which bears 29° , distant 1,400 yards from the eastern end of Gregory island, show by breakers with a slight swell; the eastern rock uncovers 2 feet at low water. The northern end of Saddle island, open westward of Gregory island, bearing 203° , leads westward; and Little Shag rock in line with the middle of Lark harbor entrance, bearing 194° , leads eastward of the rocks.

Pearl island (or Big island), eastward 1 mile from Tweed island, is $1\frac{1}{4}$ miles long, in an easterly and westerly direction, with a greatest breadth of $1\frac{1}{4}$ miles, and it is 845 feet high. Four curious pillars (the highest of which is 597 feet high) stand on its eastern side, on the northern part of a deep valley which separates them from the hill in the southeastern part of the island. Shivery point, the northern end of the island, has a rock with 5 feet water over it, bearing 83° , distant 200 yards from it.

Shag rocks consist of two groups; the northern group is a round islet 20 feet high, bearing 125° , distant $\frac{1}{2}$ mile from the southeastern end of Pearl island, with low rocks extending westward 100 yards, and southeastward 300 yards from it. The southern group is a flat, bare islet, 19 feet high, bearing 156° , distant 800 yards from the highest of the northern group, with low reefs extending northwestward 200 yards, and eastward 700 yards from it.

The shore of the Bay of Islands from South head trends about southeastward for $\frac{3}{4}$ mile to White point, and thence southward for $1\frac{8}{10}$ miles to the entrance of Lark harbor.

Lark harbor [Lat. $49^{\circ} 06' 05''$ N., Long. $58^{\circ} 22' 02''$ W.] lies between the peninsula of which Lark mountain is the summit and a

peninsula $1\frac{1}{4}$ miles long, the summit of which, mount Tortoise, is a round hill 787 feet high, and thickly wooded. The harbor stretches southwestward $1\frac{1}{2}$ miles with a slight bend to the westward and is 700 yards wide; there are several houses and piers on the northern shore. Low point is on the northern shore at 1 mile within the entrance, and a spit of shingle, which dries in places, extends southward about 450 yards from it.

A church, with a steeple, stands on Low point, and is noticeable among the fishermen's huts and sheds.

York harbor lies southward of mount Tortoise, and between it and the foot of Blow-me-down, a conspicuous mountain 2,125 feet high. A valuable copper mine on the slopes of Blow-me-down mountain is being worked, and about 250 men were employed there in 1903.

Governor island is situated nearly in the middle of York harbor, and is $1\frac{1}{2}$ miles long in an easterly and westerly direction, with a general breadth of $\frac{1}{2}$ mile.

Pier.—A pier, about 90 yards long and 16 feet broad, extends from the southern shore of York harbor southward of the eastern end of Governor island. There is a depth of 3 to $5\frac{1}{2}$ fathoms of water at its outer end, which is 175 feet long, and steamers of about 3,000 tons and drawing 16 feet of water go alongside it to load with copper ore brought from the mine by a tramroad.

Blow-me-down, 2,125 feet high, falls almost perpendicularly from the summit, and then in a steep wooded slope from the base of the cliffs to the sea.

The shore from a point northward of Blow-me-down trends about eastward $4\frac{1}{2}$ miles to Lower Frenchman head.

Lower Frenchman head, or Spurn point, the western entrance point to Humber arm, rises to an earth cliff 45 feet high; a reef extends 65 yards northward from its high water line, and then falls quickly to deep water.

Light [Lat. $49^{\circ} 03' 45''$ N., Long. $58^{\circ} 09' 35''$ W.].—A square pyramidal lighthouse, about 30 feet high and painted red and white in horizontal bands, on Lower Frenchman head, exhibits at 160 feet above high water a fixed white light, during the season of navigation.

Humber arm [Lat. $49^{\circ} 04' 00''$ N., Long. $58^{\circ} 08' 30''$ W.], extending southeastward 6 miles, and thence about eastward 7 miles, has, with a few exceptions, bold shores and deep water; it affords good anchorage in a few places only. Strong winds usually blow up or down the arm.

The shores generally rise steeply to wooded hills, on the sides of which are houses and cultivated fields, the soil being rich.

Bay of Islands village is a scattered hamlet extending along the southern shore of Humber arm for several miles.

It is a progressive place, possessing a branch of the Bank of Montreal, a fine copper mine a few miles off, slate quarries, and fishing establishments for curing cod; it also has churches of all denominations.

Bay of Islands station of the Newfoundland railway is about a mile above Corner brook.

A T-shaped railway wharf is situated at the extremity of the point opposite the railway station. Coasting steamers berth alongside the end.

Ice.—Humber arm freezes about December 26, and is usually completely closed by ice $1\frac{1}{2}$ to 3 feet in thickness from January to April, both inclusive. The early freezing which closed these waters to navigation as early as December 15, 1906, was unusual. Field ice appears about January 1 and disappears about April 15.

The first vessel generally arrives about May 12 and the last leaves about January 1.

Birchy cove [Lat. $48^{\circ} 57' 30''$ N., Long. $58^{\circ} 00' 00''$ W.] is situated at about $1\frac{1}{4}$ miles eastward of Pleasant cove; on its shores are an Episcopal church, a white building, with a small spire; the parsonage, a large two-storied house with a clock in the gable end facing the river; and a Roman Catholic church, which is white, with two spires. Shoal water extends but a short distance from the shore of this cove.

Communication.—The Newfoundland railway passes about 120 yards from the shore of Birchy cove.

There are a railway station and a post and telegraph office at Birchy cove. The mail trains which run three times a week between St. Johns and port Basque stop here.

Woods or Harbor island.—Shoal point, the southeastern end of Woods island, lies west-northward $1\frac{1}{10}$ miles from Maciver point, and about northward $1\frac{3}{10}$ miles from Lower Frenchman point, and the island extends northwestward, 3 miles from Shoal point, with an average width of 1 mile.

Puffin islands are two islands lying within 1,200 yards northwestward of the northwestern point of Woods island; the southeastern island has a group of trees on each of its two mounds, which are 91 feet high; the northwestern island is 70 feet high.

The passage between the southeastern island and the northwestern point of Woods island is a few yards wide, with a rock that uncovers lying in the middle; it is only suitable for boats.

Vesuvius rock, with $1\frac{1}{2}$ feet of water over it, is near the northwestern end of a ledge extending north-northwestward, 900 yards from the northwestern Puffin island.

Middle arm (formerly South arm) [Lat. $49^{\circ} 09' 00''$ N., Long. $58^{\circ} 07' 00''$ W.] is nearly 1 mile wide at its entrance within Black and Northern heads; from the entrance it extends with a greatest breadth of $1\frac{1}{2}$ miles for $5\frac{1}{2}$ miles in an easterly direction to Penguin head, and there separates into two branches, Goose arm and Penguin arm.

Goose arm, extending east-southeastward $2\frac{3}{4}$ miles, and thence northeastward for $4\frac{1}{2}$ miles, is a little more than $\frac{1}{2}$ mile wide in its western part; the width decreases to 200 yards at the Narrows, but expands northeastward of the Narrows to 600 yards; the shallow basin at the head is $\frac{3}{4}$ mile wide.

Penguin arm (formerly Penman arm) extends from Penguin head northeastward $1\frac{1}{2}$ miles, and thence east-northeastward nearly 2 miles; the water in it is deep, and it is clear of shoals. There is no secure anchorage for large vessels in this arm, though schooners seeking bait anchor in the bends of the shore.

Northern head [Lat. $49^{\circ} 09' 30''$ N., Long. $58^{\circ} 06' 40''$ W.] of middle arm rises in a steep cliff about 300 feet high, and is streaked with curiously thin stripes of quartz following the stratification, which is much contorted. The shore from the head curves northward round

a small cove, into which a streamlet flows, and the stripes of quartz show as far as North Arm point, a distance of $1\frac{1}{2}$ miles. This shore is foul for 350 yards off it.

Eagle island, westward, $1\frac{1}{4}$ miles from Northern head, is 600 yards long in a northerly and southerly direction, and 112 feet high.

Fisherman rock lies in the channel between the mainland and Eagle island, with North Arm point bearing 21° , distant nearly 1,400 yards, and has 2 feet of water over it.

A shoal, with 17 feet of water over it, lies nearly in mid-channel between Eagle island and the mainland, with the northern end of Eagle island bearing 277° , distant $\frac{1}{2}$ mile.

North arm [Lat. $49^{\circ} 12' 00''$ N., Long. $58^{\circ} 07' 00''$ W.] entrance is between North Arm point and Stowbridge head, which bear north-northeasterly and south-southwesterly, distant nearly 2 miles from each other, and the arm extends eastward $3\frac{1}{2}$ miles, and then north-eastward 4 miles.

Crabb point [Lat. $49^{\circ} 14' 00''$ N., Long. $58^{\circ} 12' 15''$ W.] rises in low dark cliffs to a small wooded hillock, 215 feet high, the southern end of a long stony ridge that extends northward and culminates in mount St. Gregory. This is the turning point into the Bay of Islands. A rock lies close southward of it.

The coast from Crabb point trends northwestward $1\frac{1}{10}$ miles, then north-northwestward $2\frac{3}{4}$ miles to Beverley cove, whence it continues northward $1\frac{1}{4}$ miles to North head of the Bay of Islands.

North head [Lat. $49^{\circ} 18' 50''$ N., Long. $58^{\circ} 15' 10''$ W.], a low red earth cliff, 54 feet high, fronts a marshy plateau, that is generally green in summer, at the foot of the slope from mount St. Gregory; it is fringed by bowlders that uncover, extending to a distance of 200 yards, shoal water continuing for 300 yards farther; on this shelf are two rocks, with 2 feet of water over them, bearing 274° , distant 400 yards from North head.

Population.—The residents of the Bay of Islands are of mixed nationality, comprising descendants of deserters from French vessels of war, former inhabitants of the east coast of Newfoundland (principally of Irish descent), and natives of Nova Scotia, the last named being employed principally at sawmills.

The coast from North head trends northward nearly 4 miles to Chimney Cove head and is a stony beach, fringed with rocky ledges, backed by a steep clay bank, behind which rise the slopes of mount St. Gregory and the hills falling from it. The rocky ledge extends generally to a distance of about 200 yards from the beach, but near North head it extends 300 yards, and southward $\frac{3}{4}$ mile from Chimney cove it extends 400 yards. At Shoal cove, $\frac{3}{4}$ mile from North head, there are some buildings used as a lobster factory.

Chimney Cove head is a slight projection, 450 feet high, with a perpendicular cliff on its southwestern side; eastward, toward the river valley, it falls in a conspicuous green slope extending from summit to base.

The coast from Chimney Cove head trends northward to cape St. Gregory, a distance of 1 mile, and is composed of cliffs fronted by rocks, some of which are 20 feet high.

Cape St. Gregory [Lat. $49^{\circ} 23' 50''$ N., Long. $58^{\circ} 13' 45''$ W.] is a shelf of level ground, about 200 yards wide, projecting from the higher cliffs, and its cliffs are 75 feet high. It is steep-to, but during

heavy weather there is a very high confused sea, and then small vessels should keep at least 2 miles off shore.

The coast from cape St. Gregory trends about northeastward for 5 miles to Big Cove head, and is composed of high cliffs, behind which are wooded hills and deep ravines.

Big Cove head is 820 feet high, and rises almost perpendicularly from the sea. From the head the coast trends northeastward for $1\frac{1}{4}$ miles to Trout River entrance, and the land behind it is high, culminating in a summit, 1,040 feet high, the eastern side of which slopes quickly down toward Trout river.

Trout river [Lat. $49^{\circ} 28' 50''$ N., Long. $58^{\circ} 07' 30''$ W.] flows into the southern corner of Trout River bay, a deep bight, and its entrance is sheltered from the sea by a projecting headland. The river is a small stream discharging from a series of extensive ponds, which begins a little over a mile inland.

On a sandy beach at the eastern side of the river's mouth, and on the rising bank behind, there are several houses, containing about 170 inhabitants who are engaged in the cod and lobster fisheries.

Communication.—From Trout River settlement there is a rough road to South arm of Bonne bay, and the coasting steamer, to and from that place, occasionally calls off the river during fine weather.

The coast from Trout River bay trends northeastward for $5\frac{1}{4}$ miles to Western head of Bonne bay, and is cliffy and fronted by low water rocks and ledges, extending, in places, 200 yards from the land.

Western head [Lat. $49^{\circ} 33' 10''$ N., Long. $58^{\circ} 00' 30''$ W.], from the westward, appears as the end of the high land to the southward; there are some detached rocks close off it, the highest of which is 57 feet high.

Bonne bay [Lat. $49^{\circ} 34' 00''$ N., Long. $57^{\circ} 56' 30''$ W.], the entrance to which, from Western head to Lobster Cove head, is nearly 4 miles across, extends southeastward for about 6 miles, then separates into two arms, East arm, the eastern, being $5\frac{1}{2}$ miles long and about $\frac{3}{4}$ mile wide; and South arm, the western, 4 miles long and a little more than $\frac{1}{2}$ mile wide. The scenery in these arms is grand and picturesque, the shores rising steeply to high, timber-clad hills.

The water in Bonne bay is generally too deep for anchorage, but there are places in it where good shelter can be obtained in a moderate depth of water.

Sailing vessels entering Bonne bay during strong southerly or westerly winds must be prepared for the violent squalls that blow off the high land on the southern side.

The principal settlement is at Woody point, on the western shore, at $6\frac{1}{4}$ miles inside the entrance, and the population of the whole bay numbers about 1,200, engaged chiefly in the cod and lobster fisheries.

Ice.—Bonne bay never freezes until the field ice appears, which is generally about the middle of January, but it is then completely closed with ice about 2 feet in thickness until about the middle of April, when the field ice disappears. There is occasionally ice on the coast, sometimes blocking it up to about June 8.

The first vessel usually arrives early in May, and the last leaves about the end of December.

Eastern head, eastward $1\frac{1}{4}$ miles from Western head, is high and steep; between the heads there is a long strip of shingly beach at the

foot of the cliffs, and off the western end of this there is a detached rock, situated 250 yards from the shore, which dries 2 feet.

Vessels should not approach this shore within 400 yards; at Eastern head, however, it becomes very steep and may be approached closely.

The shore from Eastern head trends southeastward for $2\frac{1}{2}$ miles and then turns to the southward for $1\frac{8}{10}$ miles to Woody point. There are several houses along the shore for $\frac{3}{4}$ mile northward of Woody point.

Woody point is 54 feet high and projects from the higher land behind, which here rises in steep slopes, more or less wooded and broken by deep ravines.

Woody Point village contains about 220 inhabitants; the English and Roman Catholic churches on the slope southwestward of the point are conspicuous; there are post and telegraph offices, schools, and churches of various denominations.

Wharves.—Silver's and Halliburton's wharves are the best for a vessel of any size to lie alongside, as their heads are in line, and together afford a length of 113 feet.

Communication.—The steamer from Bay of Islands calls at Woody point weekly, and the steamer from Halifax calls monthly during summer and autumn.

There is a telegraph office at the village.

South arm [Lat. $49^{\circ} 29' 30''$ N., Long. $57^{\circ} 54' 00''$ W.].—The shore, on which are several houses, wharves, and fishing stages, extends from Woody point south-southwestward about $1\frac{1}{10}$ miles to a low flat stony spit at the mouth of a small stream; off this spit the water shoals a little and then deepens toward Hell cove.

Birchy head, a birch-covered bluff on the western side, is $1\frac{1}{10}$ miles above Hell cove.

Foul point is on the eastern shore southeastward from Birchy head, and at the foot of the slope from a cliffy summit, 1,180 feet high, which rises steeply from the sea. A small rock, with 6 feet water over it, lies westward rather more than 100 yards from the point, and there are depths of 3 fathoms between, but otherwise there are 14 to 28 fathoms close to it. To avoid this rock keep toward the western shore. The shores around the head of the arm are low and flat, and mud banks occupy its middle for fully $\frac{1}{2}$ mile. The outer edges of the banks are very steep, there being 10 fathoms within 100 feet of the portion that dries at low water.

East arm [Lat. $49^{\circ} 30' 45''$ N., Long. $57^{\circ} 49' 30''$ W.] extends southeastward about $5\frac{1}{2}$ miles, and has a general width of about $\frac{9}{10}$ mile, with steep shores. It is entered through the Tickle, a channel about 400 yards wide, between Gadds and Norris points.

The eastern shore of East arm northwestward of Seal cove is steep-to, and rises in bare stony slopes to a remarkable conical peak, 2,135 feet high, over which there is a rough track to the interior.

Deer arm, the northern part of East arm, extends northward nearly 2 miles; inside a low sandy point at its head is a small basin, dry at low water, and Deer brook, a stream from a large pond under the mountains to the northward, flows into it.

Deer arm does not afford convenient anchorage, as the water is too deep, and it is subject to violent squalls, which blow from the surrounding hills.

Neddy harbor [Lat. $49^{\circ} 31' 20''$ N., Long. $57^{\circ} 52' 00''$ W.], situated on the northern side of the entrance to East arm, is an indentation extending northwestward about $\frac{1}{2}$ mile, with a width of 400 yards, and toward the head the harbor is $\frac{1}{2}$ mile long in an easterly and westerly direction, with an average width of 300 yards, but the area, with a depth of over 3 fathoms, available for anchorage is 700 yards long and 400 yards wide.

Neddy harbor is the most convenient, and probably the best anchorage in Bonne bay, as it is sheltered from all except southeasterly winds; with southeasterly winds the squalls are often severe, and a heavy sea is quickly raised. Large vessels moor, as the space is limited.

Wharf.—On the southern side of the inner part of Neddy harbor is a coal wharf, 130 feet long, with a head 92 feet long, alongside which is a depth of 23 feet water. There are ringbolts in the rocks for securing hawsers.

Buoy.—A spar buoy, northwestward about 200 feet from the wharf, marks some moorings for small vessels to use when lying alongside.

Coal.—A small stock of Welsh coal is maintained at Neddy harbor for the use of British government ships. The coal shed is at the inner end of the wharf.

Roche (Rocky) harbor is an indentation northward of Salmon point, extending about one mile to the eastward, with a width of $\frac{3}{4}$ mile; it affords good anchorage, except during strong westerly winds, when a heavy sea is thrown in.

The population of this locality numbers about 160 persons, all engaged in the fisheries. There is some cultivated ground on the southern side, inside of Salmon point, where potatoes and other vegetables are grown.

The coast between Bonne bay and Cow head is low, fronted by rough stony beaches and boulders. It contains no harbors, nor even anchorages, except at Cow cove, where shelter can be found in westerly to northerly winds; and it is only in the finest weather that vessels can anchor off any part of this coast.

Strong westerly to northerly winds throw a heavy sea on the shore, and landing with safety is then almost impossible, except in a few places where there is a little indifferent shelter. There is a large quantity of drift wood and wreckage on the coast.

Caution.—Sailing vessels navigating on this coast during strong easterly winds must guard against the violent squalls which come down from the mountain gorges.

Current.—Inshore between Bonne bay and Cow head, a current generally sets northward with a greatest rate of about $1\frac{1}{2}$ miles an hour.

Lobster Cove head [Lat. $49^{\circ} 36' 00''$ N., Long. $57^{\circ} 56' 45''$ W.], the northern entrance point of Roche harbor, is composed of low red cliffs, 34 feet high, fronted by flat ledges of rock for 150 yards. Near the western end of these ledges there are two large rocks, 12 feet high.

Light [Lat. $49^{\circ} 36' 10''$ N., Long. $57^{\circ} 56' 50''$ W.].—A circular white tower, 25 feet high, on Lobster Cove head, exhibits, at 115 feet above high water, an intermittent white light every $2\frac{1}{2}$ seconds, thus: Light $1\frac{1}{2}$ seconds, eclipse $1\frac{1}{2}$ seconds, which should be seen from a distance of 16 miles in clear weather.

Gun Point shoals are a group of rocky heads on a narrow ridge extending westward nearly $1\frac{1}{4}$ miles from the shore at a place 1,600 yards northeastward of Gun point. The shoalest spot, with a depth of 3 fathoms, bears 320° , distant 1,400 yards from Gun point, and around it are depths of 4 to 5 fathoms. Westward of the ridge there are depths of less than 10 fathoms for a distance of $3\frac{1}{2}$ miles from the land.

The Whaleback [Lat. $49^\circ 46' 30''$ N., Long. $57^\circ 55' 30''$ W.] is a narrow ridge of rocks; near its middle, bearing 288° , distant 1 mile from Martin point, is a small mushroom-shaped rock that dries 4 feet, and from it the ridge with depths of less than 5 fathoms extends southwestward 900 yards and northeastward 1,300 yards. There are several spots of $1\frac{1}{2}$ to 2 fathoms on the ridge, both sides of which are steep-to, but especially the northwestern, where the 20-fathom contour line is distant but little over 200 yards. In thick weather, therefore, the lead is not to be depended on when standing toward the shoal.

The coast from the bight eastward to Martin point continues about northeastward $1\frac{1}{4}$ miles to Gulls marsh, where there is a canning factory on the stony beach, and from which a trail leads through the marshes to Western Brook pond, where the factory people keep a small boat for hunting purposes.

At nearly $2\frac{1}{2}$ miles northward from Gulls marsh the beach becomes sandy, and Western brook, a small stream flowing from Western Brook pond, runs some little way behind it and falls into the sea. Northward of this the coast becomes rocky and, with a small bight, forms the projection known as Broom point, on which there are a few cottages. Two ridges of dry rocks extend about 500 yards westward from the point, and in the bight between them there is a landing stage and fish store. The outer ends of these ridges are steep-to, but off the sandy beach southward of the mouth of Western brook there are depths of less than 3 fathoms for upward of 600 yards from the shore; to this distance, and often beyond it, the sea is frequently discolored by the water from the brook.

St. Pauls bay [Lat. $49^\circ 51' 15''$ N., Long. $57^\circ 50' 30''$ W.], lying between Broom point and St. Pauls point, north-northeastward, distant $3\frac{1}{4}$ miles, extends about 1 mile eastward of the line joining the headlands, and is open to seaward. The shores are low and stony, the bottom is foul, and the anchorage, even with the strong breeze that frequently blows seaward, is unsafe.

Basin.—On the eastern side of the bay, at a break in the low shore, 1,200 yards wide, is the entrance into St. Pauls inlet. Inside the break the shores open out into an oval basin about $1\frac{1}{2}$ miles long and 1 mile wide, which is filled with banks of sand and stones that dry. It is surrounded by low marshy shores, and two channels lead from the sea.

St. Pauls inlet is about $5\frac{1}{2}$ miles long in an easterly and westerly direction, with a width varying from 3 miles to $\frac{1}{2}$ mile. Inside the entrance the water is shallow, and there are several rocks, some above water, and rocky patches; but a channel along the western shore, with about 2 fathoms of water, leads into the deeper part of the inlet, where the general depths are 7 to 20 fathoms.

Cow cove affords good anchorage in 4 to 10 fathoms of water, during northerly gales, and in moderate breezes from eastward of a

north-northwestward direction, but with winds westward of this a heavy swell rolls in, rendering the anchorage unsafe. Northerly gales are prevalent in early spring and autumn.

Cow head [Lat. $49^{\circ} 55' 00''$ N., Long. $57^{\circ} 49' 00''$ W.] is a peninsula 1 mile long in an easterly and westerly direction, $\frac{1}{2}$ mile wide, 206 feet high, and densely wooded on its southern and western sides. From its eastern end a low isthmus of sand and stones runs southeastward to the main land, and separates Cow cove, on the southwestern, from Cow Head harbor on the northeastern side. The northern side of the head is steep-to, but rocks, which dry 2 feet, extend about 200 yards southwestward from the southwestern point.

The northern slope of the head has been partially cleared and affords grazing to the sheep and cattle of the residents, whose houses are situated at the eastern end. Here there is a large canning factory and some landing stages, the latter getting some partial protection from a ridge of dry rocks extending from the northeastern point.

Cow Head harbor.—Northeastward of Cow Head isthmus a curve of sandy shore continues northward to Downes point, a distance of a little over 2 miles. White Rock islets, a chain of small islets and low-water rocks, nearly $1\frac{1}{4}$ miles long in a northeasterly and southwesterly direction, lie 600 yards off Downes point, and the bight, within these islets, lying between Cow Head isthmus and Downes point, is Cow Head harbor.

White Rock islets are connected with Downes point by a sandy flat drying at low water, which, extending southeastward and southward, occupies a considerable portion of the harbor.

Tortoise rock, awash at low water, is in the harbor entrance and separated from the rocks extending northeastward from Cow head, by a channel about 100 yards wide. In the middle of this channel and just inside Tortoise rock, is a rock, with 6 feet of water over it, and a very narrow passage, 12 to 15 feet deep, on its northeastern side. Between Tortoise rock and Thorn rock, which has less than 6 feet of water over it and lies close southwestward of White Rock islets, there is a depth of 9 to 10 feet of water.

The harbor is only suitable for vessels of moderate length, and drawing less than 10 feet of water, because not only is the passage into it narrow and tortuous, but during northerly to northwesterly winds such a heavy swell rolls in that there is great risk of touching the ground; in any case local knowledge is necessary to enter safely. Inside there is anchorage in $2\frac{1}{2}$ to $3\frac{1}{2}$ fathoms of water but in heavy westerly weather there is not much shelter.

Communication.—The steamer from Halifax, monthly, calls off Cow Head harbor on her way to and from the northern ports.

Evangeline banks are a series of rocky patches extending from 700 yards northward of Tortoise rock to the shoals westward of Lower head (Stanford point). The general depths of the banks are $3\frac{1}{4}$ to 5 fathoms, but the shoalest patch of 2 fathoms bears 319° , distant 900 yards from the northeastern grassy White Rock islet, and is on a patch about 500 yards long in a northerly and southerly direction, and 200 yards wide. North-northeastward, 300 yards from this patch, there is a patch of $2\frac{3}{4}$ fathoms, with $3\frac{1}{2}$ fathoms between.

Inside these banks, between White Rock islets and Lower head, fronting the shoaler area in Shallow bay, there is a space of water with depths of 5 to 7 fathoms in it.

Lower head (Stanford point) is a rocky projection at the termination of the sandy shore extending northeastward from Cow head. It is 35 feet high, and from it a low cliffy coast with a small sandy bight extends north-northeastward 800 yards. Off Lower head, and also off this cliffy coast, shoal water extends nearly $\frac{1}{2}$ mile, and is clearly marked by breaks, when there is any swell.

Sandy bay [Lat. $50^{\circ} 02' 15''$ N., Long. $57^{\circ} 42' 15''$ W.], 5 miles from Lower head, is a shallow bend in the coast; it is generally foul and rocky, and affords only temporary anchorage. The entrance to Parsons pond is near its southeastern end.

Parsons pond extends inland about 7 miles from Sandy bay, with an average breadth inside the narrows near the entrance of about 1 mile. The entrance is obstructed by a bar of coarse shingle, with a depth of 4 feet over it, and immediately inside the entrance, on the southern bank, is the village, with some buildings on the sandy spit opposite. Here the depth in the channel is about 1 fathom, but farther in it quickly shoals again to 3 feet, through a stony flat.

Borings for oil have been made on the southern shore of Parsons pond at $5\frac{1}{2}$ miles from the entrance.

The coast from Sandy bay trends about north-northeastward, and is a low, stony beach, with a clay bank behind it, for $\frac{3}{4}$ mile. Thence a rough beach of stones and boulders, fronted in places by rocky ledges, extends for about 4 miles to the Arches, a cluster of detached masses of sandstone honeycombed by the sea, and standing on a sandy beach a little above low water.

At 2 miles north-northeastward of the Arches the direction of the coast bends to the northeastward, and Portland hill, rather more than $\frac{1}{2}$ mile inland, is 530 feet high, thickly wooded, and, from the southward, wedge-shaped.

Westward of Portland hill, flat ledges appear outside the stony beach and continue for a distance of 2 miles to a place where there are some cottages and a canning factory.

Portland cove [Lat. $50^{\circ} 10' 30''$ N., Long. $57^{\circ} 36' 15''$ W.] lies between the canning factory and Eastern head; the water in it off the creek is shallow for about 500 yards, but outside this there is fairly good anchorage, during easterly winds, in about 4 fathoms water, sand and mud bottom, but it appears to be bad holding ground.

Eastern head, the northern point of Portland cove, is 47 feet high, rocky, and bare on the top.

The coast trends north-northeastward and is rocky for $1\frac{3}{10}$ miles from the head; here there is a white stony beach, in front of a high green bank; it then turns northward to Clifty point, which is rocky, with a bank 60 feet high inside of it.

The coast from Clifty point continues to trend north-northeastward and is stony and backed by a more or less wooded bank for 2 miles, to a low point fronted by some rocks, two of which are pinnacles 25 feet high. There are several houses on the point, and the rocks in front, extending a little northward, form Daniels cove, which is sheltered from the southwestward.

The coast from Daniels cove trends north-northeastward, and, for a distance of $3\frac{1}{2}$ miles, is a stony beach, with a high clay bank, covered on the top with scrub, and broken here and there by small streams.

Belvans cove [Lat. $50^{\circ} 20' 15''$ N., Long. $57^{\circ} 31' 50''$ W.], 6 miles from Daniels cove, is a small bight, with rocky ledges fronting it,

which afford some shelter for boats. There are several huts on the narrow foreshore under the low cliff, that here recedes a little.

Table cove, $\frac{3}{4}$ mile northward of Belvans cove, is a shallow bay with a stony beach, but it affords no shelter. There are a few huts on the beach.

Deer cove [Lat. $50^{\circ} 23' 30''$ N., Long. $57^{\circ} 31' 15''$ W.], $1\frac{1}{2}$ miles from Table point, is a small break in the rocks.

La Fontaine point [Lat. $50^{\circ} 28' 30''$ N., Long. $57^{\circ} 28' 15''$ W.] is about 7 miles from Table point.

Bad bay (formerly Mall bay) [Lat. $50^{\circ} 32' 15''$ N., Long. $57^{\circ} 23' 30''$ W.].—The shore from la Fontaine point trends northeastward for $4\frac{1}{4}$ miles, and then turns northward for $2\frac{1}{4}$ miles to Burntwood point. Bad bay, which may be said to lie between these points, is completely open, and affords no shelter.

With strong northerly and westerly winds this shore is unapproachable, owing to the heavy sea. There is a small settlement in the bay at $\frac{3}{4}$ mile southward of the river entrance, and a few houses just inside the bar.

The shore between Ponds river and Burntwood point is a rough, stony beach with a grassy bank behind it.

Eboulement point (locally Spirity point), the southern entrance point of Ingornachoix bay, lies north-northeastward, 2 miles from Burntwood point.

Ingornachoix bay [Lat. $50^{\circ} 40' 00''$ N., Long. $57^{\circ} 22' 00''$ W.], the entrance to which is between Eboulement and Rich points, which are distant 6 miles from each other in a northerly and southerly direction, extends $3\frac{1}{2}$ miles eastward of the line joining the entrance points, and is quite open. The entrances to Hawke harbor and bay, Keppel harbor, and port Saunders are in the southeastern part of the bay.

Keppel island [Lat. $50^{\circ} 37' 50''$ N., Long. $57^{\circ} 19' 00''$ W.], northeastward, distant $2\frac{2}{10}$ miles from Eboulement point, and at the head of the bay off the entrances to Hawke and Keppel harbors and port Saunders, is about 1 mile long in an easterly and westerly direction, with a greatest width of $\frac{1}{2}$ mile; its coasts are steep-to, but Morue spit, shingle-covered at high water, extends eastward $\frac{1}{4}$ mile from Grass point, the eastern end of the island. The northwestern end of the island is a blackish cliff.

Light [Lat. $50^{\circ} 38' 00''$ N., Long. $57^{\circ} 18' 50''$ W.].—A square pyramidal lighthouse, 23 feet high, surmounted by an octagonal drum and lantern, and painted red and white in horizontal bands, on the northwestern point of Keppel island, exhibits, at 107 feet above high water, a fixed white light that should be seen from a distance of 14 miles in clear weather.

Hawke harbor entrance is between Keppel island and a low wooded point 1,600 yards eastward of Hawke point.

The harbor is between Hawke flat and the shore southeastward of it, on the southwest, and the peninsula, on the northeast; it is $1\frac{1}{2}$ miles long in a northwesterly and southeasterly direction, and from 400 to 700 yards wide, with depths of 7 to 18 fathoms.

Hawke bay is inside of and to the eastward of the harbor and extends east-northeastward, $4\frac{1}{2}$ miles from Robinson island, with an average width of $1\frac{1}{4}$ miles. The southern shore from southward of Robinson island trends somewhat northward of eastward for 1,300 yards to Ourson point, off which shoals lie nearly 600 yards distant,

and this side of the bay eastward of Ourson point is foul, but the northern side is clear except for Cook bank; there is a salmon fishery in the northeastern part of the bay, from which shallow water extends 500 yards, and Torrent river flows into the eastern side.

Keppel harbor, eastward of Keppel island and within Keppel point, is 1 mile long and nearly $\frac{1}{4}$ mile wide, but shoal water extends $\frac{1}{8}$ mile from the head.

Port Saunders entrance is northeastward of Keppel island and 400 yards wide between Saunders point on the south and Two Hills point, a wooded hill with a double summit, on the north, and the harbor extends eastward $2\frac{1}{2}$ miles, with an average width of $\frac{1}{2}$ mile.

Ice.—Port Saunders freezes late in November or early in December, and the ice breaks up between April 20 and May 10.

Communication.—During summer and autumn the steamer from Bay of Islands calls at port Saunders weekly and the steamer from Halifax monthly.

The shore of Ingornachoix bay from Two Hills point trends north-northwestward for 4 miles to Gargamelle cove, and caution is required in its approach, as rocky ground, with less than 5 fathoms water over it, extends off it in places for distances of $\frac{1}{2}$ to $\frac{3}{4}$ mile.

Rich point [Lat. $50^{\circ} 41' 52''$ N., Long. $57^{\circ} 24' 35''$ W.] is the northern point of Ingornachoix bay and the western end of Rich Point peninsula.

Light [Lat. $50^{\circ} 41' 52''$ N., Long. $57^{\circ} 24' 20''$ W.].—A white octagonal lighthouse, 64 feet high, with a red lantern, on Rich point, exhibits, at 98 feet above high water, a flashing white light, showing two flashes every five seconds, thus: Light 0.25 second, eclipse 0.75 second, light 0.25 second, eclipse 3.75 seconds. The light should be seen from a distance of 15 miles in clear weather. The keeper's dwelling near the lighthouse is white.

Wireless telegraph station.—There is a wireless telegraph station at Rich Point lighthouse.

Old Port au Choix (locally Back arm), on the southeastern side of Port au Choix peninsula, is 1 mile long, $\frac{1}{4}$ mile wide at the entrance and $\frac{1}{2}$ mile at the head; shoals, which partly dry, extend off its northwestern shore, but the southeastern shore is nearly bold-to; it is entered by two channels, one on each side of Querré islet.

Querré islet, in the middle of the entrance, is 350 yards long in a northeasterly and southwesterly direction, 100 yards wide, and bold-to on the northwestern side, but the other coasts are foul.

Ardent rock lies less than 150 yards westward from Querré islet, and is joined to Port au Choix peninsula by shoal water. Ardent tail, a shoal, extends 200 yards northeastward from the rock.

Beacons.—A beacon stands on the southwestern end of Querré islet, and a similar beacon on a small cliff on the southeastern shore of the port; these beacons in line bear 200° .

At the head of the harbor are three pyramidal beacons. Lower pyramid, the lowest of these, is on the shore; the middle one, surmounted by a ball, is about 350 yards behind it; and Gargamelle pyramid, the third, is on the summit of the land at rather over 100 yards inside of the northwestern shore of Gargamelle cove; these beacons in line bear 223° .

A beacon stands on the shore, bearing 132° , distant $\frac{1}{4}$ mile from Querré Islet beacon; and two beacons are situated on the shore, bear-

ing 96° , distant about 950 yards from Querré Islet beacon, which in line bear 127° .

A beacon, with a St. Andrew's cross top mark, stands on the southern shore of the port, bearing 80° , distant 665 yards from Lower pyramid beacon; it is a good anchoring mark.

St. John bay [Lat. $50^{\circ} 53' 00''$ N., Long. $57^{\circ} 13' 00''$ W.], lying southeastward of a line between Barbace and Ferolle points, which are $19\frac{1}{2}$ miles apart in a north-northeasterly and south-southwesterly direction, contains several islands, of which St. John island, situated 5 miles northeastward from Barbace point, is the largest.

Ice.—St. John bay fills with northern ice and freezes in December or January; the ice breaks up in May. During severe winters the ice extends from Rich point to Ferolle point.

St. John island [Lat. $50^{\circ} 49' 00''$ N., Long. $57^{\circ} 13' 30''$ W.] is about 3 miles long in an easterly and westerly direction, and $2\frac{1}{4}$ miles wide, moderately high, with a round summit, and wooded only at its northwestern end.

St. John Harbor, on the western side of the island, extends eastward and northeastward about $1\frac{1}{4}$ miles, with a width of 600 to 200 yards, and is a good anchorage for steamers or small vessels, but square-rigged sailing ships require a leading wind to enter.

Horn island, $\frac{1}{4}$ mile long in a northeasterly and southwesterly direction and 150 yards wide, lies northeastward $\frac{1}{2}$ mile from Square rock and is separated from St. John island by a passage 100 yards wide, with 13 feet of water in mid-channel.

Beacon.—There is a beacon on Horn island.

Round Head island, 750 yards southward of the eastern part of St. John island, is $1\frac{1}{4}$ miles long in an east-northeasterly and west-southwesterly direction, 750 yards wide and 180 feet high.

Round Head shoal, with 7 feet of water over it, extends southward 250 yards from the southwestern point of the island.

Shoal.—A shoal, with $4\frac{1}{4}$ fathoms of water over it, lies 295° , distant 450 yards from Round Head point.

Falaise shoal, with 13 feet of water over it, lies 150 yards northward of the northeastern part of Round Head island; there is a depth of 5 fathoms close northward of it. Horn island, a little open northward of the foot of Round head, bearing 239° , leads northwestward of the shoal.

Good bay, a spacious anchorage between St. John and Round Head islands, has deep water, but good holding ground, and there is never any sea; it is entered either from the eastward or westward.

Anchorage beacons.—Well point lies northeastward, distant 600 yards from Horn island, and on the point are two beacons which in line bear 255° .

On the northern shore of Good bay, nearly $\frac{1}{2}$ mile northeastward of Well point, are two beacons which in line bear 355° .

The best anchorage in Good bay is in about 17 fathoms at the intersection of the lines of the two pairs of beacons.

Sheep island lies 150 yards off the northwestern shore and near the eastern end of Good bay; it is less than 200 yards in diameter; an islet and shoal water are between it and the shore to the westward, and a reef extends 400 yards southeastward of it. This reef is joined to Flat point, 400 yards to the northeastward, by a shoal bank.

Barred bay, between Sheep island and Flat point, affords anchorage to small craft, but the holding ground is bad.

Beacon.—There is a beacon on Flat point, the northeastern entrance point of Barred bay.

Hare island, northeastward 1,200 yards from Round Head island, is 1,700 yards long in a northeasterly and southwesterly direction, $\frac{1}{4}$ mile wide, low and rugged; shoals extend nearly 400 yards from its southwestern end.

Passage shoals, lying 350 yards from Round Head island, and between it and Hare island, are two heads, the western with a depth of 6 feet of water, and the other, about 200 yards to the eastward, with a depth of $3\frac{3}{4}$ fathoms. There is a deep passage both eastward and westward of these shoals.

The east coast of St. John island is foul to the distance of $1\frac{1}{4}$ miles from Flat point to Turret point, which is the northeastern point of the island, and is so called from a circular mound near it.

Wolf rock, at the northeastern end of these shoals, bears 81° , distant 1,600 yards from Turret point, to which it is almost joined by rocks and a bank; Wolf tail, a reef, extends east-southeastward 600 yards from it.

Reculoux shoal bears 114° , distant 2,100 yards from Wolf rock, and there is a depth of $2\frac{1}{2}$ fathoms over it. The channel between Reculoux shoal and Bayot shoal is about 900 yards wide.

Numerous shoals, with 3 feet to 5 fathoms of water over them, lie southward of Wolf rock and westward of Reculoux shoal.

Fossil shoal, with 6 feet least water over it, stretches westward nearly a mile along the coast from about 700 yards northeastward of the western point of Turret bay.

Flat island, about 1 mile westward of St. John island, is $1\frac{2}{10}$ miles long, in a northerly and southerly direction, $\frac{3}{4}$ mile wide, low, smooth, and wooded on its northeastern part; rocks and shoals extend about 600 yards off the coasts of the southern half of the island; the Watchman (le Guetteur), a rock above water, is on the southeastern edge of these shoals. Shoal water extends $\frac{1}{4}$ mile off the northern end of the island.

Twin islands [Lat. $50^\circ 53' 40''$ N., Long. $57^\circ 16' 30''$ W.], north-northeastward, $2\frac{3}{4}$ miles from Flat island, are two islands separated by a narrow channel, and together extend 1 mile in a north-northeasterly and south-southwesterly direction, with a width of $\frac{1}{4}$ mile; they are low, flat, and covered with grass. There is a solitary house on the southern Twin island.

Shoal.—A shoal, with 4 fathoms of water over it, bears 110° , distant $1\frac{1}{2}$ miles from the northern end of the northern Twin island.

Whale islands [Lat. $50^\circ 52' 45''$ N., Long. $57^\circ 08' 15''$ W.], north-eastward about $3\frac{3}{10}$ miles from Turret point, St. John island, are two islands, each about 900 yards long and 400 yards wide, low, flat, and grassy, lying nearly in an easterly and westerly direction from each other, the channel between being about 300 yards wide, and shallow. There are several islets and reefs within a distance of 1,200 yards southward from them, among which boats find shelter. Dolmen, the western island, has a remarkable cliff, 20 feet high at its eastern end, and shoals extend southward $\frac{3}{4}$ mile from it; the southern and southwestern sides of these islands should not be approached nearer than a mile.

A rocky shoal, with 8 to 9 fathoms over it, extends southwestward from the shoals southward of Dolmen island; the western end of this shoal bears 230° , distant $1\frac{3}{10}$ miles from the western end of Dolmen island.

Freycinet shoal, with 7 feet water over it, bears 350° , distant 1,600 yards from the eastern end of the eastern Whale island. A rock, with 27 feet of water over it, bears 96° , distant 900 yards from Freycinet shoal.

James island [Lat. $50^{\circ} 55' 15''$ N., Long. $57^{\circ} 10' 35''$ W.], bearing 68° , $3\frac{1}{2}$ miles from the northern Twin island, is about 1,200 yards long in a northeasterly and southwesterly direction, 400 yards wide, 20 feet high, covered with grass, and clear on all sides.

Fox islands, situated north-northeastward, 2 miles from Whale islands, are two flat islands about 20 feet high and covered with grass, together extending about 1 mile northwest and southeast, with a width of 800 yards. An islet lies in the southern part of the channel between them. Breton reef, southwestward, 1 mile from the western island, uncovers. The channels between the islands and between them and Breton reef must not be used for navigation, but those between Breton reef and Freycinet shoal, and between Breton reef and James island are clear. Fishing boats and small schooners anchor in the space between the two large islands, but the holding ground is bad and the sea heavy with northerly winds.

Squid cove [Lat. $50^{\circ} 53' 30''$ N., Long. $56^{\circ} 58' 30''$ W.] is shallow and open southwestward. Castor point is on the northern side of the cove, and an islet lies off its western side.

Shoal water extends 248° for 2 miles from a point situated southward $\frac{1}{2}$ mile from Castor Point islet; this includes Cloué shoal, which has 3 feet of water over it, and lies $1\frac{3}{10}$ miles from the point. Testu bank, bearing 248° , $2\frac{1}{4}$ miles from Castor Point islet, is about 350 yards in diameter, and has a least depth of 4 fathoms over it.

Castors harbor [Lat. $50^{\circ} 55' 30''$ N., Long. $56^{\circ} 59' 00''$ W.] entrance is between Castor and Yellow points, Castor point being low, wooded, and bordered by rocks extending off nearly a mile.

The harbor extends eastward 2 miles, and the entrance is $\frac{3}{4}$ mile wide, but banks and shoals stretch off both shores, making the channel narrow and intricate. It is suitable only for small vessels.

Beacons.—There are two beacons on Yellow point.

Castor river flows into the southeastern part of the harbor from a large pond at a short distance inland, and it affords good salmon fishing during the season.

New Ferolle peninsula [Lat. $51^{\circ} 01' 00''$ N., Long. $57^{\circ} 06' 00''$ W.], of moderate height, and partly wooded, is $2\frac{1}{4}$ miles long from Ferolle point to New Ferolle point, and is joined to the mainland by a low isthmus, 600 to 800 yards wide, over which the masts of the fishing vessels can be seen. Detached rocks appear to extend nearly 200 yards from Ferolle point. The northern coast is steep-to, but New Ferolle point is foul to the distance of 400 yards northeastward.

New Ferolle cove extends southward 1 mile from New Ferolle point. Black point, which bears 105° , distant $1\frac{1}{2}$ miles from New Ferolle point, is the other headland. The cove is open northeastward, and, although it is a bad anchorage, it is much frequented.

The middle of this cove is occupied by a shoal, with 2 to $2\frac{1}{2}$ fathoms water over it, which extends as far to the northeastward as the line between New Ferolle to Black points.

St. Margaret bay [Lat. $51^{\circ} 02' 00''$ N., Long. $57^{\circ} 00' 00''$ W.] is entered between Black point and Dog peninsula; this peninsula bears 46° , distant $1\frac{1}{2}$ miles from the point, and is of moderate height, covered with brushwood, and faced by cliffs.

The bay extends $3\frac{1}{2}$ miles southeastward, but the eastern portion is filled with islets and shoal banks, among which only very small craft can find shelter.

Ice.—*St. Margaret bay* freezes late in November or in December, and the ice breaks up about the middle of May.

The coast from the northern point of Dog peninsula to Grave point, situated 3 miles eastward, is low and indented with several open coves, on the shores of which are some huts. It is difficult to distinguish from a distance. Shoal water extends 700 yards off the shore of Dog cove, which lies eastward of the peninsula, and less than 400 yards off other parts of the coast.

Brig bay [Lat. $51^{\circ} 03' 30''$ N., Long. $56^{\circ} 54' 15''$ W.] is immediately southeastward of Grave point. A rock, with 15 feet of water over it, bears 18° , distant 450 yards from Grave point, and there are depths of less than 5 fathoms between it and the point.

Entrance island bears 29° , distant $\frac{1}{2}$ mile from Grave point, and lies on the northeastern side of South pass, the entrance to Brig bay and to Old Férolle harbor. It is about 200 yards across, 10 feet high, and covered with gray flat stones. Rocks that cover, and shoal water extend 465 yards southwestward of the island, and shoal water extends 200 yards off the northwestern side, but the southeastern side is bold-to. A shingle spit, steep-to, extends 100 yards eastward of it.

Beacons.—A pile of stones, surmounted by a pole, stands on Entrance island, and there is a beacon on West mound, 52 feet high, 300 yards within the southwestern end of Old Férolle island. Two leading beacons, consisting of poles surmounted by white casks, are situated on the shore southeastward of Front point. Three beacons stand on Grave point. Dependence should not be placed on these beacons being in position.

Old Férolle island [Lat. $51^{\circ} 05' 00''$ N., Long. $56^{\circ} 53' 15''$ W.].—The southwestern end of this island lies northward 200 yards from Entrance island; the channel between is shoal, and there is a small rock in the middle, but it is used by boats and small schooners. Old Férolle island is $1\frac{4}{10}$ miles long in a northeasterly and southwesterly direction, generally about 400 yards wide, 69 feet high, bare on its northwestern side, and covered with gray flat stones.

Fish island lies northward 600 yards from Old Férolle island; a shallow flat, on which are three islets and some rocks, connects them.

Old Férolle harbor, between Old Férolle island, with the islands northward of it, and the mainland, is about 1 mile long in a direction parallel to Old Férolle island, about 300 yards broad, between the 5-fathom lines southeastward of Old Férolle island, with an anchorage about 800 yards long in a northerly and southerly direction, and over 200 yards wide, northeastward of that island, is entered by Southern pass, southwestward of Entrance island, and Northern pass, northeastward of Fish island, the latter being available only for small vessels.

Seal cove, north-northeastward, $\frac{3}{4}$ mile from Fish island, is open westward and does not afford good anchorage. A reef extends southwestward, 350 yards from Seal point, the northern point of this cove.

Cape Ste. Genevieve, northeastward $\frac{3}{4}$ mile from Seal point, is low, covered with small trees, fringed by shoals, and must not be approached within $\frac{1}{2}$ mile. Cape islet is nearly joined to the northern point of the cape headland by shoal water.

Beacon.—There is a pile of stones surmounted by a pole on a mound near the southwestern end of Current island.

Ste. Genevieve bay [Lat. $51^{\circ} 08' 30''$ N., Long. $56^{\circ} 50' 30''$ W.] lies between the mainland and Entry, Gooseberry, and Current islands. The eastern shore of the bay is wooded, low, without any distinctive feature, and bordered by shoals, several of which are situated eastward of Entry island, leaving, however, sufficient space for a good anchorage for fishing craft between them and Entry island in $3\frac{3}{4}$ to 5 fathoms of water.

Ice.—*Ste. Genevieve bay* freezes late in November or during December, and the ice breaks up about the middle of May.

Black Duck cove, 1 mile northeastward from Current island, is an open bight, with several fishermen's houses on its shores.

St. Barbe point, $\frac{1}{2}$ mile northeastward from Black Duck cove, is tolerably steep, low, and wooded; it is bordered by a shingle beach and broken white stones, and must not be approached nearer than 400 yards.

St. Barbe bay [Lat. $51^{\circ} 12' 15''$ N., Long. $56^{\circ} 47' 45''$ W.] lies within St. Barbe and Anchor points, which bear north-northwestward and south-southeastward, distant $1\frac{7}{10}$ miles from each other. The northeastern and eastern shores of the bay are fringed by shoals. Winter flat, with 10 feet least water over it, is nearly 800 yards offshore. Except in the harbor the ground is very foul and rocky, and breakers are said to extend right across the bay after heavy westerly gales.

St. Barbe harbor, at the southeastern end of the bay, is entered between Harbor point, which is marked by a lobster factory on it, on the western side, and Stony point on the eastern side.

Ice.—*St. Barbe bay* freezes late in November or during December, and the ice breaks up about the middle of May.

Communication.—The steamers from Bay of Islands call weekly at St. Barbe harbor during summer and autumn, and those from Halifax call monthly.

Tidal streams.—The tidal streams along the coast from Anchor point to the entrance of Belle Isle strait sometimes attain a rate of 2 knots an hour, the flood setting southwestward and the ebb northeastward, but they are much influenced by the wind.

Flower cove, east-northeastward of Seal islands, and southward $\frac{3}{4}$ mile from Flower Island lighthouse, is much frequented by fishing craft, and affords good anchorage to vessels of moderate length, drawing less than 16 feet water. The court-house, a large square house of darker color than any of the others in the settlement, is on the highest part of Capstan point, which is the northern side of the cove, and is low and fringed with a stony beach.

The cove extends northeastward nearly 1 mile, with a width of $\frac{1}{4}$ mile at the entrance, narrowing to the head. Rocky islet lies in the middle of the entrance, and there is shoal water between it and the northern shore.

Flower island [Lat. $51^{\circ} 18' 26''$ N., Long. $56^{\circ} 43' 30''$ W.] lies northward about 900 yards from Capstan point, and southwestward

150 yards from Nameless point, the end of a peninsula about a mile in length on the northern side of Nameless cove. The island is 400 yards long, eastward and westward, and 200 yards wide; and there is a house on it.

Light [Lat. $51^{\circ} 18' 26''$ N., Long. $56^{\circ} 43' 33''$ W.]—A square white lighthouse with a red lantern, 50 feet high, and a dwelling attached, on the western side of Flower island, exhibits at 51 feet above high water, a revolving white light, that attains its greatest brilliancy every thirty seconds, and should be seen from a distance of 12 miles in clear weather.

The coast of Newfoundland between Flower island and cape Norman, a distance of $37\frac{1}{2}$ miles, is low and featureless, backed by a wooded ridge about 100 feet high. There are numerous huts and fishing sheds near the sea, but no marks of any kind that enable a mariner to fix his position.

Cape Norman [Lat. $51^{\circ} 37' 50''$ N., Long. $55^{\circ} 52' 40''$ W.] is bare, rocky, and rises to low cliffs. On it are several huts used by the seal fishers. The northwestern side of the cape is steep, but from close southeastward of it to Whale point, which lies southeastward $\frac{3}{4}$ mile from the cape, rocky ledges extend about 400 yards offshore.

Light [Lat. $51^{\circ} 37' 45''$ N., Long. $55^{\circ} 53' 00''$ W.]—A white cylindrical iron tower, surmounted by a white cylindrical iron lantern with a red roof, 57 feet high, on the summit of the cliff at about 400 yards westward of cape Norman, exhibits at 116 feet above high water a flashing white light showing groups of 3 flashes every 30 seconds, thus: Flash $\frac{1}{2}$ second, eclipse $5\frac{1}{2}$ seconds; flash $\frac{1}{2}$ second, eclipse $5\frac{1}{2}$ seconds; flash $\frac{1}{2}$ second, eclipse $17\frac{1}{2}$ seconds, which should be visible from a distance of 16 miles in clear weather.

Fog signal.—A diaphone, worked by compressed air, gives blasts of 5 seconds duration, with intervals of 30 seconds between them, during thick or foggy weather. The fog-signal house, a square white building with a red roof, is situated about 100 yards eastward of the lighthouse.

Pistolet bay [Lat. $51^{\circ} 34' 00''$ N., Long. $55^{\circ} 47' 00''$ W.]—The entrance of Pistolet bay is between Black islet and Burnt cape, which bear nearly east-southeastward and west-northwestward, distant $3\frac{1}{4}$ miles from each other, and the bay extends southward 6 miles, and widens to $6\frac{1}{2}$ miles at its head, exclusive of Milan arm.

Burnt island [Lat. $51^{\circ} 34' 30''$ N., Long. $55^{\circ} 43' 30''$ W.] extends south-southwestward $2\frac{1}{2}$ miles from Burnt cape and is about 1,200 yards wide; it is barren, whitish in color, and 223 feet high. The island is joined to the mainland by a low isthmus, 200 yards wide, which separates Isthmus cove from Ha-ha bay to the northward. On the western coast of the island, at about a mile from Burnt cape, is a deep hole named Whale cave (le trou de la Baleine), which is conspicuous from the westward.

Milan point lies south-southeastward about $3\frac{1}{4}$ miles from Isthmus point, and from about 1,200 yards northward of Milan point, Trompe l'œil point, consisting of low rocks and boulders, extends westward $\frac{9}{10}$ mile, and a reef continues westward about 1,600 yards from Trompe l'œil point. Micmac islet, in the entrance to Milan arm nearly 800 yards west-southwestward from Milan point, is small and grassy.

Milan arm extends southeastward 2 miles from Micmac islet, and then turns eastward, with shallower water, for 2 miles farther. It affords secure anchorage for vessels drawing 16 feet and less.

Ice.—The upper part of the arms of Pistolet and Sacred bays freeze in December, and the bays from cape Norman to cape Bauld fill with ice. The ice breaks up in May, early or late, according to the season.

Cape Onion [Lat. $51^{\circ} 36' 30''$ N., Long. $55^{\circ} 37' 00''$ W.] is 259 feet high. A ledge extends east-northeastward 600 yards from the cape, and on its outer end is the Mewstone (Gros Oignon). On the ledge are two other cliffy rocks which form the northern side of Onion cove, and on the southern side of the cove are some fishing establishments. The southern shore of the cove is foul, and the cove is open eastward. Onion island lies about east-southeastward 600 yards from the southern entrance point of the cove, and it is surrounded by reefs for nearly 350 yards, except to the southward.

Sacred bay [Lat. $51^{\circ} 36' 00''$ N., Long. $55^{\circ} 35' 00''$ W.].—Cape Artimon bears eastward, $3\frac{1}{4}$ miles from cape Onion, and Sacred bay extends southwestward about 3 miles from between these capes. There are numerous islets and shoals in the bay, and West and South roads are the only safe anchorages.

Shoal.—The outer shoal in the middle of the western part of the bay bears 22° , distant 350 yards from the eastern end of the northern Moyacs island; it has 16 feet of water over it, and is steep-to, except toward the land between South and West roads, the whole of which space is foul.

Shoals.—Mauvais Gars rock, lying $\frac{1}{4}$ mile southeastward of Fauvette point, is small, and covers at high water.

Bon gars and Petit gars are nearly connected to Fauvette point; Bon gars, the southeastern one, situated 163° , 400 yards from the point, is above water, and steep-to on its southern side.

An isolated rock, with 19 feet of water over it, lies nearly in the middle of West road, with Fauvette point bearing 62° , distant 700 yards.

Sacred islands.—*Great island* [Lat. $51^{\circ} 38' 10''$ N., Long. $55^{\circ} 33' 20''$ W.], northeastward $1\frac{1}{10}$ miles from the Mewstone, is nearly 1 mile long, north-northeastward and south-southwestward, 200 to 800 yards wide, 269 feet high, and covered with grass. It is almost steep-to.

Mauve bay (Noddy harbor).—Noddy point bears eastward $\frac{3}{4}$ mile from cape Raven, and Mauve bay extends southward $1\frac{1}{2}$ miles from between them. A peninsula projects from the eastern shore of the bay at about $\frac{1}{10}$ mile inside of Noddy point; deep water runs in a narrow channel for about 800 yards inside this peninsula, where a few small vessels obtain anchorage in $3\frac{1}{4}$ fathoms water, good holding ground; westerly winds are violent, but the anchorage is safe, and the sea with northerly winds does not fetch home.

Garden cove, on the western side of the bay opposite the peninsula, extends 500 yards to the westward, with shoal water about 150 yards off its shores; it affords anchorage for small vessels in 16 feet of water, sand bottom and fair holding ground, but an easterly swell sometimes fetches in.

The rest of the bay affords no shelter from the sea.

Cape Bauld [Lat. $51^{\circ} 38' 43''$ N., Long. $55^{\circ} 24' 30''$ W.] is the northern point of Kirpon island, which lies at the northern end of Newfoundland, and it is the southern entrance point of Belleisle strait. Kirpon island is $3\frac{1}{2}$ miles long from north to south, $1\frac{1}{2}$ miles wide, and separated from the mainland by a channel 100 yards wide. Cape Bauld is a steep, rocky, barren point, around which the tidal streams are strong, variable, and eddying.

Light [Lat. $51^{\circ} 38' 43''$ N., Long. $55^{\circ} 24' 30''$ W.].—A brown tower, having a height of 63 feet from base to vane, standing on a concrete foundation 6 feet high and surmounted by a circular metal lantern, painted white, with red roof, on the high ground about 230 yards within cape Bauld, exhibits at 187 feet above high water, a flashing white light which shows one group of 2 flashes every 15 seconds, and should be seen from a distance of 20 miles in clear weather.

Fog signal.—A diaphone horn, worked by compressed air, gives a blast of 7 seconds duration every 45 seconds, thus: blast, 7 seconds; silent interval, 38 seconds, during thick or foggy weather. The fog-signal house is a rectangular, white building with a red roof, situated 50 feet eastward of the lighthouse, and the horn points northward.

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GENERAL.

Chart Number.

- 1412 Atlantic Ocean from Flemish Cape to New York, including the *Gulf of Saint Lawrence* and the *Great Bank of Newfoundland*.
- 1013 North America, *Gulf of Saint Lawrence*.
- 981 North America, *Southeast Coast of Nova Scotia and Newfoundland*, Cape St. Mary to Halifax, with outer banks.

NOVA SCOTIA, NEW BRUNSWICK AND PRINCE EDWARD ISLAND.

- 2132 Nova Scotia—south coast—*Ragged Island Harbor to Cape Sable*.
- 524 S. E. Coast of Nova Scotia. Sheet I, from *Cape Sable to Sambro I^d*.
- 525 S. E. Coast of Nova Scotia, Sheet II, from *Sambro I^d to Cape Canso*.
- 2126 Nova Scotia—Southeast Coast. *Cape Canso to New Harbor Cove* including the Southern Shore of Chedabucto Bay.
- 1066 *Prince Edward Island* and Adjacent Coasts from Sea Wolf Island to Escuminac Point.
- 1179 New Brunswick, *Miramichi Bay*.
- 1067 New Brunswick, Bay of Chaleurs and Adjacent Coasts, from Escuminac Point to Cape Gaspe.

BAY OF FUNDY.

- 609 *Northern Part*.
- 610 *Southern Part*.
- 1057 *Grand Manan Island*, and Adjacent Coast.
- 2134 *Tusket Islands to Brier Island*.
- 2136 *Gulliver Hole to Port Lorne*.
- 1092 *Magdalen Islands*.

2440 NEWFOUNDLAND, GENERAL.

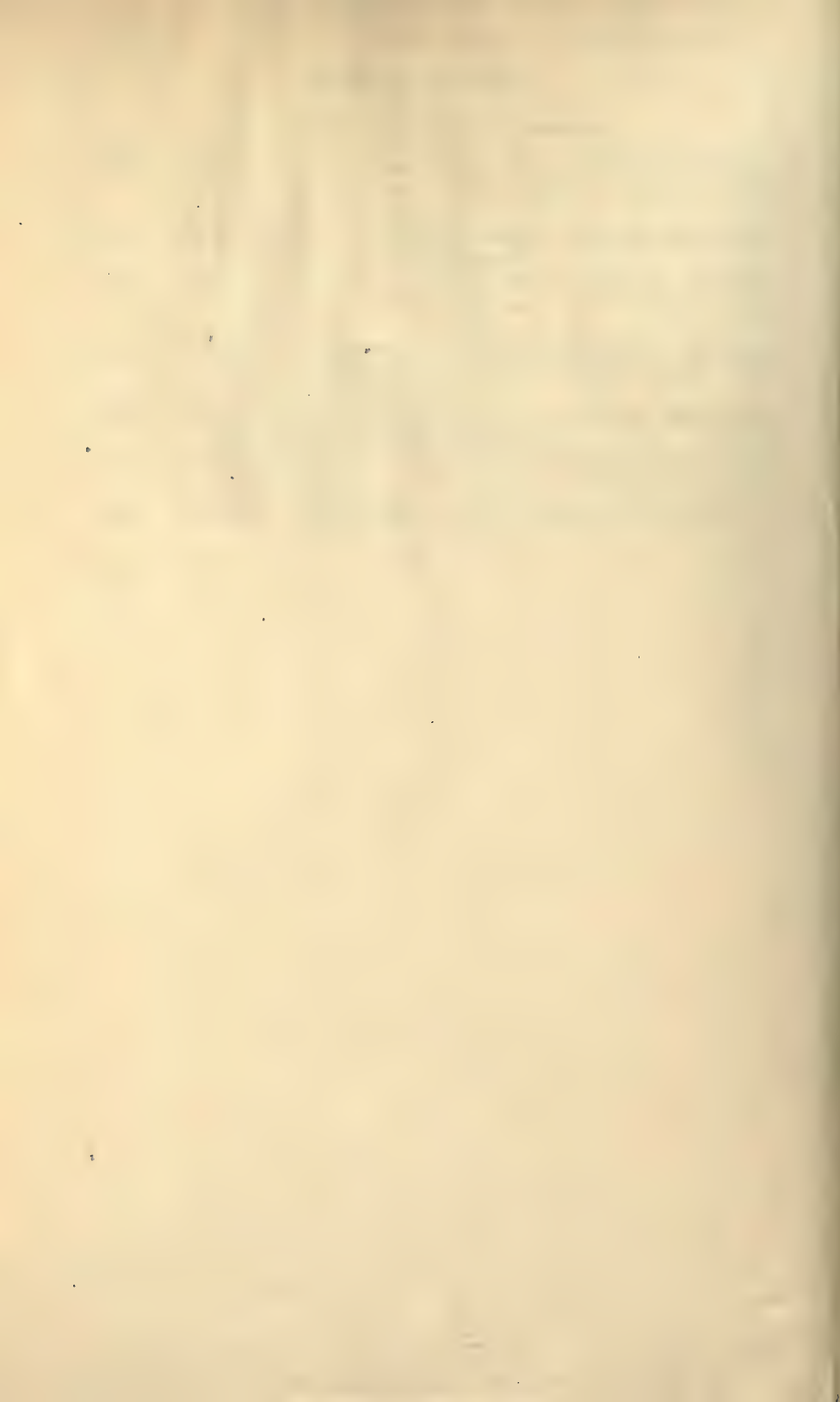
- 2417 South Coast, *Ramea Islands to Indian Harbor* (Inset) Grand Bruit Harbor.
- 2418 Southwest Coast, *Indian Harbor to Cape Ray*.
- 1104 West and South Coasts, *Bonne Bay to Burges Islands*.
- 1105 West Coast, *Strait of Belleisle to Bonne Bay* and South Coast of Quebec, Strait of Belleisle to Cape MacKinnon.

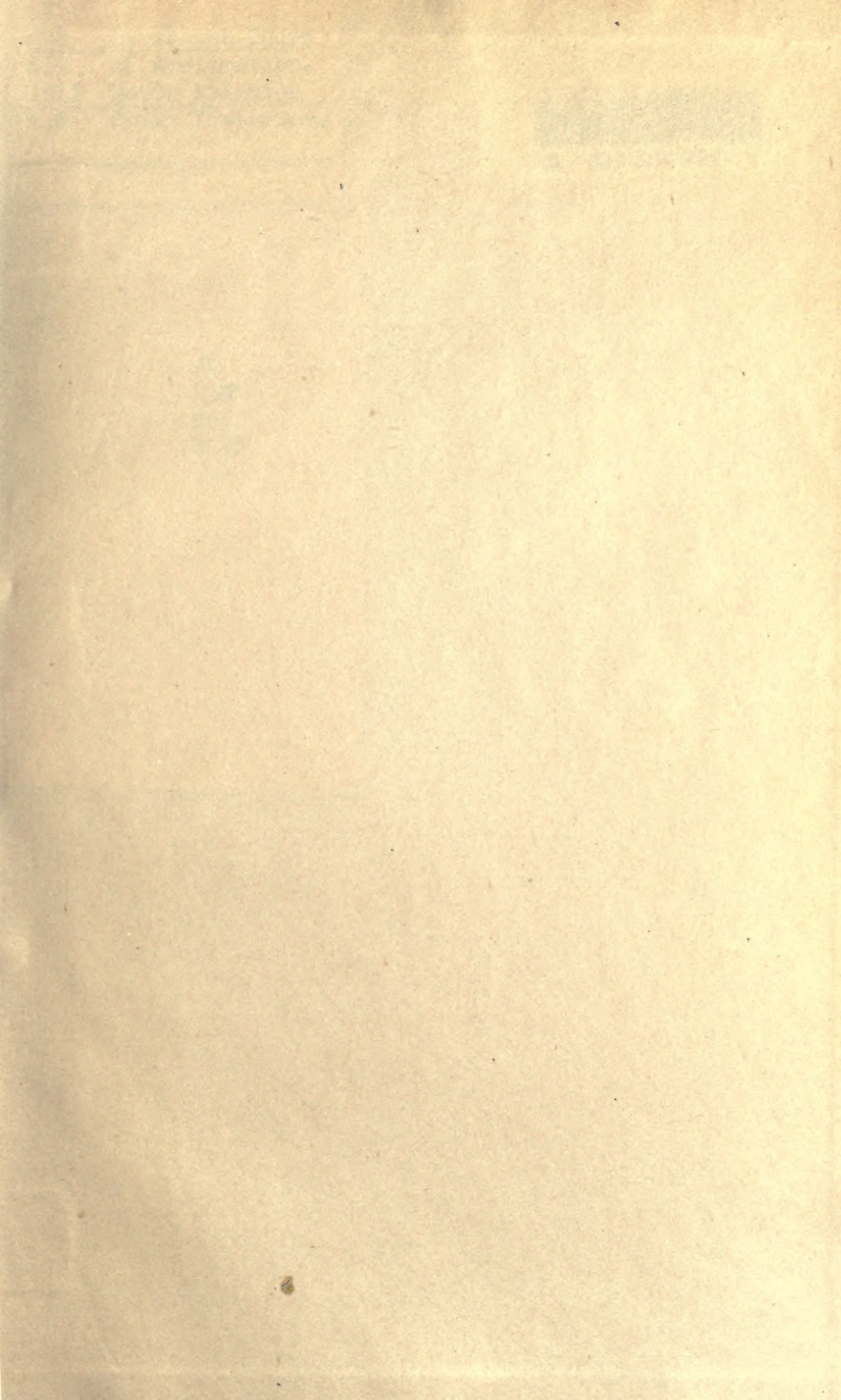
NEWFOUNDLAND, BAYS AND HARBORS.

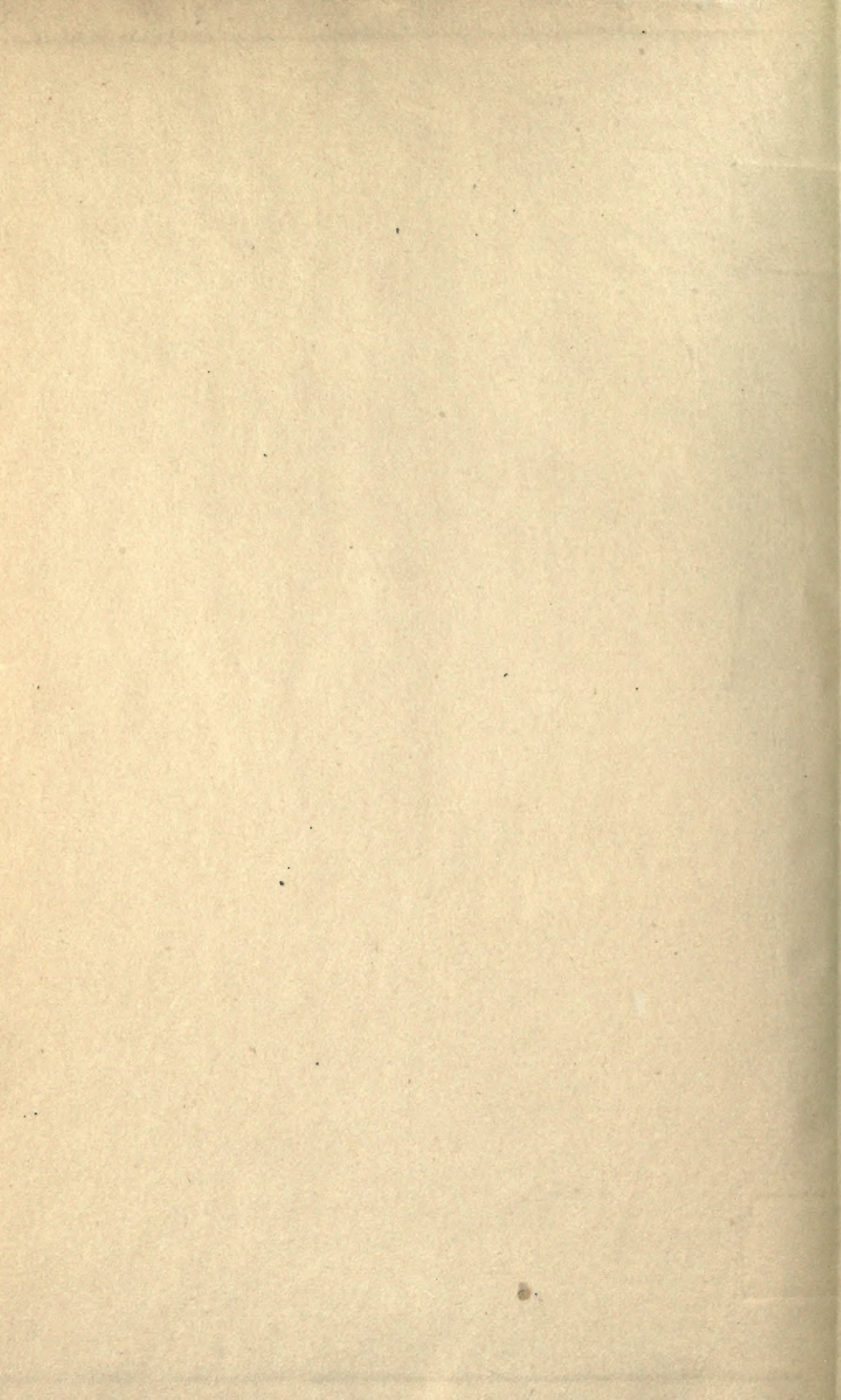
Chart Number.

- 2108 North and West Coast, *Good Bay and St. John Harbor, Cape Norman and Cook Harbor, Green Island Anchorage.*
- 1175 West Coast, *Ingornachois Bay*, Port Saunders and Keppel and Hawke Harbors.
- 2152 West Coast, *Bonne Bay*, Roche (Rocky) Harbor, Woody Point Anchorage, and Lark Harbor (*Bay of Islands*).
- 597a West Coast, *Bay of Islands*, Little Port, York Harbor, Petipas Cove, and The Narrows (Goose Arm).
- 2141 West Coast, *Port au Port.*
- 2094 West Coast, *St. George Bay*, Isthmus Bay, Bear Cove, Red Island Road, and Ship Cove.
- 594 West Coast, [*St. George Bay*], St. George Harbor and Codroy Roads.
- 809 Coast of Labrador from 52° 10' N. L. to 54° 07' N. L.









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